2774

SUPREME COURT OF THE UNITED STATES.

No. 81.

ALEXANDER DENNISTOUN, JOHN DENNISTOUN, WILLIAM MYLNE and WILLIAM WOOD, partners under the style of A. DENNISTOUN & CO., Plaintiffs,

vs.

ROGER STEWART.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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UNITED STATES OF AMERICA,
Southern District of Alabama.

Pleas had before the Honorable the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama, at a term thereof began and held in and for said District, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-five: the Honorable John A. Campbell, Presiding Judge, and John Gayle, Judge, Presiding.

A. DENNISTOUN & Co., Plaintiffs,
vs.
ROGER STEWART, Defendant.

Mandate from Sup. Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the Circuit of the United States for the Southern District of Alabama, greeting:

Whereas, lately in the Circuit Court of the United States for the Southern District of Alabama, before you, or some of you, in a cause between Alex. Dennistoun, John Dennistoun and William Craig Mylne and William Wood, partners, under the style of A. Dennistoun & Co., plaintiffs, and Roger Stewart, defendant, the judgment of the said Circuit Court was in the following words, viz: "It is therefore considered by the Court, that the said plaintiffs have naught by their said action, but that the defendant go hence without day, and that he recover of and from the said plaintiffs his costs by him about his defence in this behalf sustained," as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States, by virtue of a suit of error, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-four, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel: on consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Circuit Court in this cause be and the same is hereby reversed, with costs, and that the said plaintiffs recover against the said defendant, Roger Stewart, ninety-two dollars and seventy-two cents for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Circuit Court, with directions to award a *venire facias de novo.*

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the judgment and opinion of this Court, as, according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-four.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Be it remembered, that heretofore, to wit, on the fifth day of April, in the year of our Lord one thousand eight hundred and fifty-three, A. Dennistoun & Co. sued out of said Court their writ of *capias ad respondendum* against Roger Stewart in the words and figures following, to wit:—

Capias ad Res.

UNITED STATES OF AMERICA,

Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

The President of the United States, to the Marshal of said District, greeting: You are hereby commanded to take the body of Roger Stewart, merchant, who is an alien and subject of the Queen of Great Britain, and him safely keep, so that you have him before the Honorable the Circuit Court aforesaid, at the place of holding said Court, at Mobile, on the second Monday of April, inst., to answer unto Alexander Dennistoun, John Dennistoun, William Craig Mylne and William Wood, copartners and citizens of the State of New York, in a plea of trespass on the case, to their damage twenty thousand dollars.

Herein fail not; and have you then and there this writ.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said [L. S.] Circuit Court, this 4th Monday of December, in the year of our Lord one thousand eight hundred and fifty-two.

Issued the fifth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

Attest: JOHN FITTS, *Clerk C. C.*
Southern District of Alabama.

Cause of Action.

£4417 14 11. MOBILE, *Sept. 9th*, 1850.

Sixty days after sight of this first of exchange, second and third unpaid, pay to the order of ourselves, in London, forty-four hundred and seventeen pounds fourteen shillings eleven pence sterling, value

received, and charge the same to account of 1058 bales of cotton per Windsor Castle.

Your obed't serv't,
JAS. REID & CO.
Per pro WM. MOULT, JR.

H'y Gore Booth, Esq., Liverpool.

Acceptance.

7*th Oct.* 1850.

Accepted for two thousand five hundred and seventy-one pounds eighteen shillings and seven pence, being balance unaccepted for account of 1058 bales of cotton, per Windsor Castle, payable at Glyn & Co.

Per pro HENRY GORE BOOTH.

(Endorsed:) Pay Messrs. A. Dennistoun & Co., or order.

Per pro JAS. REID & CO.
WM. MOULT, Jr.

PHILLIPS & SEWALL,
Pl'ffs Att'ys.

Acceptance of Service of Capias & Agreement.

We accept service of the writ, and agree that the depositions and notices in the case in the City Court may be used in the trial of this case.

TAYLOR & HITCHCOCK.
P. PHILLIPS.

Mobile, 5th April, 1853.

And afterwards, to wit, at the term of said Court begun and held in and for said District, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-three, the said plaintiffs filed in said Court a declaration in the words and figures following, to wit:—

Declaration.

Circuit Court United States,
Fifth Judicial Circuit, Southern Dist. Alabama:

April Term, 1853.

Alexander Dennistoun, John Dennistoun, William Craig Mylne, and William Wood, copartners doing business under the name and style of A. Dennistoun & Co., all of whom are citizens of the State of New York, by their attorney complain of Roger Stewart, who is an alien and subject of the Queen of Great Britain, defendant in this suit in custody, &c. in a plea of trespass, in *assumpsit*—

For that whereas, the said defendant on 9th September, 1850 at Mobile aforesaid, by the name and style of James Reid & Co.

made his bill of exchange in writing, and directed the same to one Henry Gore Booth, Liverpool—meaning Liverpool in the Kingdom of Great Britain—and thereby requested the said Henry Gore Booth, sixty days after sight of that his first of exchange, second and third unpaid, to pay to the order of James Reid & Co. in London—meaning London in the kingdom of Great Britain—£4417 14 11, lawful money of Great Britain, and to charge the same to account of 1058 bales of cotton per "Windsor Castle." And said defendant then and there, by the name and style of James Reid & Co., endorsed said bill of exchange to the plaintiffs.

And the said plaintiffs afterwards, to wit, on the 7th October, 1850, duly presented the same to said Henry Gore Booth for acceptance, who then accepted said bill for £2571 18 7, being balance unaccepted for account 1050 bales of cotton per Windsor Castle, payable at Glyn & Co., London, aforesaid, of which the defendant then and there, to wit, in the county aforesaid, had due notice and assented to such acceptance.

And though afterwards, and when the said bill became due and payable according to the tenor and effect thereof and the acceptance aforesaid, the same was duly presented for payment at the said Glyn & Company, London: yet neither the said Glyn & Company, nor the said Henry Gore Booth, or any person in his behalf, then paid the same, or any part thereof; and the said bill so accepted as aforesaid, was thereupon then and there duly protested for non-payment, of all which the defendant then had due notice; and then and there, to wit, in the county aforesaid, in consideration of the premises, promised the plaintiffs to pay them the amount of the said bill so accepted as aforesaid, on request.

And whereas, also, the said defendant heretofore, to wit, on the first day of February, eighteen hundred and fifty-one, to wit, in the county aforesaid, was indebted to the plaintiffs in the sum of twenty thousand dollars, for money then lent by the plaintiffs to the defendant, at his request.

And in twenty thousand dollars for money then paid by the plaintiffs for the use of the defendant, at his request.

And in twenty thousand dollars for money then received by the defendant for the use of the plaintiffs.

And in twenty thousand dollars for money then found to be due from the defendant to the plaintiffs, on an account then stated between them.

Yet the defendant hath disregarded his promises, and hath not paid the said moneys above mentioned, or any of them, or any part thereof.

And the plaintiffs aver, that the two thousand five hundred and seventy-one pounds eighteen shillings and seven pence, sterling money of Great Britain, for which said bill of exchange was accepted, and which was not paid, as above stated, was and is of great value, to wit, of the value of twenty thousand dollars, lawful money of the United States, and that the same was due and payable, and that said

bill was duly protested for non-payment, and the defendant was duly notified thereof before the commencement of this suit; and that said moneys remain wholly due and unpaid, to plaintiffs' damage twenty thousand dollars, and therefore they bring suit.

PHILLIPS & SEWALL,
Pl'ffs Att'ys.

Pleas.

Defendant pleads *non-assumpsit*—payment—set off, with leave to introduce special matters.

TAYLOR & HITCHCOCK,
for Def't.

Minutes.

And on the sixteenth day of April, in the year of our Lord one thousand eight hundred and fifty-five, being a day of the regular term of said Court, begun and held in and for said District at Mobile, on the second Monday of April, one thousand eight hundred and fifty-five, the following proceedings were had in this cause, to wit:—

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

This day came the plaintiffs by their attorneys, and also came the defendant by his attorneys, and thereupon also came a jury of good and lawful men, to wit: J. C. Gwin, O. P. Hall, J. C. Smith, Caleb Price, H. W. Broadnax, J. W. Holmes, Oliver Turner, J. H. Wylie, A. R. Pledger, C. W. Gascoigne, George Mason, and H. K. Fetty-place, who were empanelled and sworn well and truly to try the issue joined; and pending the argument in this cause, the Court adjourned until to-morrow morning at 10 o'clock.

TUESDAY MORNING, *April 17th*, 1855.

The Court met, pursuant to adjournment.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

The argument in this cause was resumed and concluded this day, by the entry of the certificate of a division of opinion between the Judges of the Court, as hereafter set forth, and the jury was discharged from a further consideration of the same.

Certificate of Division of Opinion.

CIRCUIT COURT OF THE U. S.,
Southern Dist. of Ala.:

A. DENNISTOUN & Co.
vs.
JAMES REID & Co.

Upon the trial of this cause in the Circuit Court aforesaid, the defendant, among other defences to the case of the plaintiffs, insisted that the plaintiffs had surrendered to one Byrne, a bill of lading for ten hundred and fifty-eight bales of cotton on the Windsor Castle, whereby the said Byrne was enabled to dispose of the said cotton, and apply the proceeds otherwise than for the payment of the bill upon which this suit was brought, against the rights and interests of the said defendant, whereby he was injured to the whole amount of the bill. And upon the point of this defence the depositions of Joseph Bramwell, Robert Barrett, Robert Winthrop, A. E. Byrne, Orlando Jones, Andrew Stewart, Charles Livingston, Moses Joynson, T. D. Anderson, and Wm. Moreland, which are hereunto attached, were read to the jury, and formed the testimony relied on by the parties in reference to such defence. And upon the instructions proper to be given to the jury upon the said defence, the following questions arose, and upon which the members of the Court were opposed and divided in opinion:—

1. Whether the firm of Dennistoun, Wood & Co., of New York, or the plaintiffs, were bound to hold the said bill of lading for the shipment on the said Windsor Castle as a security for the bill of exchange described in the declaration, and whether any amount of loss arising to the said defendant from their failure to hold the said bill, for the purpose of securing the proceeds of the cotton specified therein, for the payment of the bill of exchange described in the declaration, can be used as a defence against the bill, or any part thereof.

2. Whether the said Dennistoun & Co. were required to hold the said bill of lading as a secutity for any bill of exchange drawn by the defendant or his agents upon the said shipment of cotton, other than those to which the same was attached, or of which they, the said plaintiffs, had specific and direct notice at the time of the settlement with Byrne in the manner stated in the depositions; and whether notice to Dennistoun, Wood, & Co., in New York, was operative as a notice to the plaintiffs in Liverpool, though no notice was received by the house in Liverpool of such outstanding bill before said settlement.

3. Whether, if the plaintiffs surrendered the said bill of lading to the said Byrne, under a promise from him that the proceeds of the cotton should be applied to the payment of bills that might come forward, and that this bill should subsequently come forward; and

that the plaintiffs have failed to sue said Byrne, or to take any other legal proceedings against him, and that the said Byrne has the proceeds of the cotton, more than sufficient to pay the bill, these facts or any other facts in connection therewith that are contained in the said testimony offer any defence against the case of the plaintiffs.

4. Whether any view of the evidence introduced upon the said trial and hereto attached would warrant the jury in finding for the defendant, upon this point of the defence, to the case of the plaintiffs.

5. And the further question arose, whether the statute of Alabama regulating the damages upon bills of exchange like the present, returned under protest, regulates the rate of damage in this case.

And the Judges of this Court, in pursuance of law, have stated the questions upon which their disagreement occurred, and hereby certify the same to the Supreme Court of the United States.

J. A. CAMPBELL,
Associate Justice of the Sup. Court.

JOHN GAYLE,
Dist. Judge for Alabama.

Depositions of Witnesses attached to the foregoing Certificate.

Interrogatories to be propounded to Mr. Joseph Bramwell of New York, in a suit commenced in the City Court of Mobile County, Alabama, wherein Alexander Dennistoun, John Dennistoun, William Craig Mylne, and William Wood, composing the firm of A. Dennistoun & Company, are plaintiffs, and Roger Stewart is defendant, on the part of said plaintiffs.

Interrogatories to Joseph Bramwell.

First Interrogatory. Are you acquainted with the parties to the above entitled suit? Under what name and style does Roger Stewart transact business? What is the name of your firm in New York? Have you or your firm ever acted as the agents of James Reid & Co. of Mobile?

Second Interrogatory. Do you know of the shipment in 1850 of 1058 bales of cotton, per "Windsor Castle," by James Reid & Co., of Mobile, to Liverpool, and of the bills drawn against the same? If yea, please, so far as you know, and so far as you or your firm had any agency in the matter, to state the whole transaction, and particularly what bills were drawn against it: to whom they were sold; on whom they were drawn; by whom, and what contract or agreement, if any, accompanied them. State the whole transaction fully and particularly.

Third Interrogatory. What was the whole amount drawn against the 1058 bales, per Windsor Castle, and what portion of that amount was paid; and what balance on said cargo remained unpaid?

Fourth Interrogatory. Was one of the bills of Reid & Co. drawn on account of said cargo for £4,417 11*s.* 11*d.*? If yea, to what amount was this bill accepted, and why for a less amount than its face?

Fifth Interrogatory. Were James Reid & Co. informed of the acceptance of £2,571 11*s.* 11*d.* sterling, on said bill of £4,417 11*s.* 11*d.*? If yea, how and when, and did they object to it—that is, to such partial acceptance? If so, what objection did they make?

Sixth Interrogatory. State whether you or your firm acted in the premises as the agents of James Reid & Co., of Mobile, or not, or for whom you acted.

Seventh Interrogatory. If you know any other matter or thing touching the premises that may benefit the plaintiffs in this suit, please set it forth fully and particularly, as if specially interrogated thereto.

PHILLIPS & SEWALL,
Att'ys for Pl'ffs.

Filed March 10th, 1852.

R. A. LEWIS,
Cl'k.

Rec'd 10 March, 1852, and executed on John A. Hitchcock on same day.

JAS. F. HUTCHISSON,
Sh'ff M. C.,
By JOHN T. WEBB,
Dept. Sh'ff.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Now pending in the City Court of Mobile.

THE STATE OF ALABAMA,
Mobile County:

On this 13th day of March, 1852, before me, Reuben A. Lewis, personally came Isaac Bell, Jr., and being duly sworn, saith: That Joseph Bramwell resides out of the State of Alabama, to wit, in the city of New York; that he believes said Bramwell to be a material witness for the plaintiffs in the above entitled case.

J. BELL, JR.

Subscribed and sworn to before me the day and year above written.

REUBEN A. LEWIS,
Cl'k.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

THE STATE OF ALABAMA, MOBILE COUNTY,
City Court of Mobile:

Cross-Interrogatories to be propounded to Joseph Bramwell, in behalf of the defendant, a witness to be examined on the part of plaintiffs in the above entitled suit. And said defendant now objects to the examination of said Joseph Bramwell by said plaintiffs, upon the ground that he is incompetent as a witness for plaintiffs, inasmuch as he is interested in the event of the suit.

Cross-Interrogatory 1st. If you were the agent of James Reid & Co. for the negotiation of the bill or bills spoken of in the direct interrogatories, were you also the agent of the plaintiffs, or of their house in New York?

Cross-Interrogatory 2d. Under what name or style does the house of Dennistoun do business in New York?

Cross-Interrogatory 3d. Have you been advised by the Dennistouns, plaintiffs, or either or any of them, by letter or otherwise, what was the amount of proceeds of 1,058 bales of cotton, "per Windsor Castle," mentioned in the direct interrogatories? If yea, state the same fully; and if you were so informed by writing, please attach the writing to your answer to this interrogatory.

Cross-Interrogatory 4th. When the bill for £4,000 and upwards, specified in the 4th direct interrogatory, was taken by the Dennistouns in New York, were you not required to, or did you not become responsible in some way for its liquidation?

Cross-Interrogatory 5th. Did you, or both yourself and the house of Dennistouns in New York, hear or know at or before the time when the bill of exchange mentioned in the 4th direct interrogatory was taken by them, that the 1058 bales of cotton "per Windsor Castle," had been purchased by James Reid & Co., or defendant Roger Stewart, solely as agent, upon the order and for account of Henry Gore Booth; and that the bills drawn against said shipment, to which bill of lading for same was attached, were drawn to pay for said cotton, and by the order of Booth?

Cross-Interrogatory 6th. If you state that you have become liable in any way for the payment of any part of the bill mentioned in the 4th direct interrogatory, state how you became liable, and whether you were liquidated said liability, or whether you have ever been released from the same. If you have liquidated or been released from the same, state how; and when; and where; and by whom; and why.

Cross-Interrogatory 7th. Would not the Dennistouns have taken the said bills, with the signature of James Reid & Co. thereto attached

as drawers, just as soon, without having been previously advised of the authority of Reid & Co. to draw, as with such advice?

Cross-Interrogatory 8th. Please carefully look over your answers to the foregoing direct and cross-interrogatories, and specify what you have stated from information, belief, or hearsay, and state from whom you get your information; and when; and where; and how.

TAYLOR & HITCHCOCK,
Def'ts Att'ys.

Filed March 13, 1852.

REUBEN A. LEWIS,
Clerk.

Commission to take Bramwell's Deposition.

THE STATE OF ALABAMA, MOBILE COUNTY,
City Court of Mobile:

To CHARLES J. BUSHNELL, WILLIAM A. MAXWELL, JAMES N. PLATT, WILLIAM S. KERNOCHAN, S. WEIR ROOSEVELT, JAMES W. WILSON, and J. P. GIRARD FOSTER, Esqrs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or either one of you, full power and authority to examine Joseph Bramwell on the direct and cross-interrogatories hereto annexed, as witness in a cause pending in our Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant.

And therefore we command you, or either one of you, that at such time and place as may suit your convenience, you do cause the said Joseph Bramwell to come before you, or either one of you, and then and there examine him on oath, as a witness in the cause aforesaid.

And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said City Court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, Clerk of our said City Court of Mobile, at office, this 16th day of March, in the year of our Lord one thousand eight hundred and fifty-two.

Attest:

[L. S.] REUBEN A. LEWIS,
Clerk.

Bramwell's Deposition.

Deposition of Joseph Bramwell, a witness produced, sworn, and examined by the undersigned commissioner, by virtue of the annexed commission, issuing out of the City Court of Mobile, Mobile County, in the State of Alabama, in a case therein pending, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant, taken

and reduced to writing at sixty-nine Wall Street, in the city of New York, on this seventh day of April, eighteen hundred and fifty-two.

Joseph Bramwell, of the city of New York, aged thirty-six years and upwards, being duly sworn, says:

1*st.* To the first direct interrogatory he saith: I am acquainted with the parties to the above entitled suit. Roger Stewart transacts business under the name of "James Reid and Company." The name of my firm in New York is Joseph Bramwell and Company; my firm have acted as the agents of James Reid and Company, of Mobile.

2*d.* To the second direct interrogatory he saith: I do know of the shipment in eighteen hundred and fifty of 1058 bales of cotton per Windsor Castle, by James Reid and Company of Mobile, to Liverpool, and of the bills drawn against the same. The bills drawn against it were, one for five thousand pounds, another for five thousand pounds, and a third for four thousand four hundred and seventeen pounds fourteen shillings and eleven pence, drawn by James Reid and Company upon Henry Gore Booth, of Liverpool. Said bills were sold to Messrs. Dennistoun, Wood and Company by my firm, with bills of lading attached, for 1058 bales of cotton.

3*d.* To the third direct interrogatory he saith: The whole amount drawn against the 1,058 bales per Windsor Castle was fourteen thousand four hundred and seventeen pounds fourteen shillings and eleven pence. I do not know what portion of that amount was paid, nor what balance on said cargo remained unpaid.

4*th.* To the fourth direct interrogatory he saith: One of the bills of Reid & Company, drawn on account of said cargo, was for four thousand four hundred and seventeen pounds fourteen shillings and eleven pence; this bill was accepted for two thousand five hundred and seventy-one eighteen shillings and seven pence only, from the fact that bills had been previously drawn by Joseph Bramwell and Company, as agents of James Reid and Company, in the absence of their sterling drafts, amounting eleven thousand eight hundred and forty-five pounds sixteen shillings and four pence, which sum of two thousand five hundred and seventy-one pounds eighteen shillings and seven pence balanced Reid and Company's invoice of 1,058 bales, reimbursement for which had been taken by them on Joseph Bramwell and Company.

5*th.* To the fifth direct interrogatory he saith: I cannot recollect whether James Reid and Company were informed of this partial acceptance, or whether they objected to it.

6*th.* To the sixth direct interrogatory he saith: My firm acted in the premises as the agents of James Reid & Company, of Mobile.

7*th.* To the seventh direct interrogatory he saith: In giving up the bills of lading to the Dennistouns there was no understanding or agreement between us, beyond the usual implied one of collateral security for the satisfactory acceptance of the bills.

To the cross-interrogatories he answers:—

1*st.* To the first cross-interrogatory he saith: I was not, nor was my house, the agent of the plaintiffs, or of their house in New York.

2*d.* To the second cross-interrogatory he saith: Dennistoun, Wood and Company.

3*d.* To the third cross-interrogatory he saith: I have not been advised by the Dennistouns, plaintiffs, or either of them, what was the amount of proceeds for 1,058 bales of cotton per Windsor Castle, mentioned in the direct interrogatories.

4*th.* To the fourth cross-interrogatory he saith: Neither my firm nor myself became responsible in any way to the Dennistouns upon the bill for four thousand four hundred and seventeen pounds fourteen shillings and eleven pence, taken by them and referred to in the fourth direct interrogatory.

5*th.* To the fifth cross-interrogatory he saith: Both Dennistoun, Wood and Company and myself knew at the time the said bill of exchange, mentioned in fourth direct interrogatory, were taken by Dennistoun, Wood and Company, that the 1,058 bales of cotton per Windsor Castle had been purchased by James Reid and Company, and that the bills drawn against said shipment were drawn to pay for said cotton.

6*th.* To the sixth cross-interrogatory he saith: I never became liable for the bill of four thousand four hundred and seventeen pounds fourteen shillings and eleven pence, or any part thereof, mentioned in the fourth direct interrogatory.

7*th.* To the seventh cross-interrogatory he saith: I presume Dennistoun, Wood and Company would have taken the said bills with the signature of James Reid and Company as drawers, just as soon without having been previously advised of the authority of Reid and Company to draw, as with such advice.

8*th.* To the eigth cross-interrogatory he saith: I do not find that I have stated anything in my answers to the direct or cross-interrogatories upon information, hearsay or belief.

JOSEPH BRAMWELL.

Sworn and subscribed to this seventh day of April, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Com'rs Certificate.

I, J. P. Girard Foster, a commissioner appointed by the City Court of Mobile, Mobile County, State of Alabama, by virtue of the annexed commission, do hereby certify that I caused Joseph Bramwell, a witness in the annexed commission named, to come before me at sixty-nine Wall Street, in the City of New York, on the seventh day of April, eighteen hundred and fifty-two; that the said Joseph Bramwell was solemnly sworn, upon the Holy Evangelist of Almighty God, to make full, true and perfect answers to the interrogatories

and cross-interrogatories hereto annexed. That the answers of the said witness, numbered so as to correspond with the questions in writing, were correctly taken down by me, and transcribed in my presence by Wm. Henry Byam, and that the testimony so taken down and transcribed, was correctly and audibly read over to the said witness, Joseph Bramwell, and by him examined and subscribed.

J. P. GIRARD FOSTER,
Commissioner, &c.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Interrogatories to be propounded to Joseph Bramwell, Robert Barret and Robert Winthrop, witnesses residing in New York, to be examined on the part and in behalf of plaintiffs.

Interrogatories to Joseph Bramwell.

1. Did you as agent of defendant, and at what time, sell to Dennistoun, Wood & Co. certain bills of exchange? If yea, describe the transaction.

2. Was the said transaction secured by a bill of lading for cotton? If yea, state when you delivered up the said bill of lading to Dennistoun, Wood & Co., and when the same was delivered up to H. G. Booth.

3. If you know anything else to benefit the plaintiffs, state the same as though particularly interrogated.

Interrogatories to Robert Barrett.

1. Do you act as cashier or clerk for Messrs. Dennistoun, Wood & Co. of New York, and how long have you so been employed?

2. Do you know of the sale of certain bills of exchange made by James Bramwell as agent of Jas. Reid & Co. of Mobile, to Messrs. Dennistoun, Wood & Co.? If yea, state the whole transaction, and if you know, state also when the said Bramwell delivered to the said Dennistoun, Wood & Co. the bill of lading for the cotton upon which the exchange was drawn, and when the same was forwarded to Liverpool, and handed over to the drawee of the bills.

3. If you know anything else that would benefit plaintiffs, state the same as though you were particularly interrogated.

Interrogatories to Robert Winthrop.

1. Do you know the parties to this suit? Are you in the employ of either of them? What is the character of your employment, and how long have you been so engaged?

2. Do you know anything of a draft drawn by Jas. Reid & Co., Mobile, on H. G. Booth for £4417 14*s.*, 7*d.* accepted for £2571 18*s.*

7*d*.? If yea, describe the same particularly, and the manner in which it became the property of the plaintiffs.

3. Do you know whether the defendant, as James Reid & Co., received notice of the protest for non-payment of said bill? If yea, state all the matters connected therewith particularly, and if a notice was received at New York, and mailed there for Mobile, append to your deposition copy of said notice.

4. If you know anything else to benefit the plaintiffs, state the same as though particularly interrogated.

PHILLIPS & SEWALL,
Pl'ffs' Att'ys.

Consent in Writing Endorsed.

We waive affidavit, and consent commission may issue, condition that either party may use it as testimony, subject to legal objections.

TAYLOR & HITCHCOCK.

A. DENNISTOUN & Co.
vs.
JAMES REID & Co.

Interrogatories on the part of defendant, to be propounded to Joseph Bramwell, Robert Barrett and Robert Winthrop.

The witnesses will please look over again their answers to the direct interrogatories, and if they have through inadvertence stated anything as of their own knowledge which they in fact only know from having heard it, they will please correct their answers, so as to be distinct as to the sources of their information. The witnesses will then answer:

1. If you answer that you negotiated any bills as agent for defendant, you will please give the exact date, if you can, of each transaction connected with the business; when the first batch of bills were drawn and delivered; when the second came on; when delivered; when forwarded; all their dates, and the exact time Dennistoun, Wood & Co. received them. State the exact amount of money received from Dennistoun, Wood & Co. on the shipment and these bills, and when and how each sum was paid. State the whole transaction, accurate and at length, with certainty as to dates, or as near as possible.

2. Were the bills drawn against a shipment of cotton? What number of bales, and by what vessel shipped? To whom consigned?

2. To whose order was the B.L. drawn? who received this bill? at what date delivered?

3. Did Dennistoun, Wood & Co. purchase the bills as agents for plaintiffs, or on their own account? Are the two firms connected in business? To whose order were the bills drawn?

4. Were Dennistoun, Wood & Co., or plaintiffs, apprised of the

nature of the shipment; at whose instance the cotton was purchased, and that defendant had bought it only as the agent of Booth? Did not you know this, and did not the plaintiffs, or D., W. & Co. get the knowledge through you or otherwise, before the bill of lading was disposed of by them? State what you heard them say.

5. Do you know, or have you heard through the plaintiffs or their agents, whether the proceeds of the cotton would have been sufficient to paid the amount due plaintiffs, for their advances, if sold in time, and all the proceeds applied?

6. What really went with the proceeds of this cotton? Did Booth by his own hands, or did some one else, get it, and apply it to secure themselves?

7. Do you know, or have you heard of one Byrne as being connected in this transaction; what arrangements were made between him and plaintiffs? Did he not in fact pay plaintiffs this bill? Did he receive any of the proceeds of the cotton? Why and what reason did he give for not appropriating it? State what you know or have heard from plaintiffs, and whether Byrne kept any the proceeds on account of his own claims against Booth.

8. If the witness, R. Winthrop, should say anything of the rec't of notice of protest on the bill of £4,417 14*s*. 11*d*., he will please state how it was received in New York: was it addressed to any one in New York, or enclosed in a letter to any one? If so, state to whom it was addressed and rec'd. Who enclosed or wrote the letter enclosing it; who sent it to Mobile, and to whom was it addressed in Mobile; was it sent to J. Bell? By what conveyance did the notice come from Liverpool? Name the vessel.

9. If you know any other thing that in your judgment may benefit the defendant, state it at full length and without reserve.

TAYLOR & HITCHCOCK,
Def'ts Att'ys.

Commission to take Depositions of Bramwell, Barrett, & Winthrop.

THE STATE OF ALABAMA, MOBILE COUNTY,
City Court of Mobile:

To J. P. GIRARD FOSTER, CHARLES J. BUSHNELL, and WILLIAM H. MAXWELL, Esqrs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or either one of you, full power and authority to examine Joseph Bramwell, Robert Barrett, and Robert Winthrop, on the direct and cross-interrogatories hereto annexed, as witnesses in a cause pending in our said Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore we command you, or either one of you, that at such time and place, or times and places, as may suit your convenience, you do cause the said Joseph Bramwell, Robert Barrett

and Robert Winthrop to come before you, or either of you, and then and there examine them on oath, as witnesses in the cause aforesaid; and that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said City Court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, Clerk of our said City Court of Mobile, at office, this second day of September, in the year of our Lord one thousand eight hundred and fifty-two.

[L. S.]

Attest: REUBEN A. LEWIS,
Clerk.

Depositions of Joseph Bramwell, Robert Barrett and Robert Winthrop, witnesses produced, sworn and examined by the undersigned Commissioner, by virtue of the annexed commission, issuing out of the City Court of Mobile, Mobile County, in the State of Alabama, in a cause therein pending, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant; taken and reduced to writing at sixty-nine Wall street, in the city of New York, on the day of September, eighteen hundred and fifty-two.

Bramwell's Deposition.

Joseph Bramwell, of the city of New York, aged thirty-six years and upwards, being duly sworn, says:—

1. To the first direct interrogatory he saith: My firm, as agents of James Reid & Co. of Mobile, sold to Dennistoun, Wood & Co., on the 20th of August, 1850, bills of exchange against a shipment of 1,058 bales of cotton, per Windsor Castle, by James Reid & Co., of Mobile, to Henry Gore Booth, of Liverpool. James Reid & Co. drew on us against said shipment as follows:—

$23,831	66	presented for acceptance			2nd	September.
5,000	00	"	"	"	4th	"
4,000	00	"	"	"	5th	"
9,459	32	"	"	"	5th	"
2,248	15	"	"	"	5th	"

$44,539 13, equivalent to £9,162 6*s.* sterling, which amount, in the absence of their own sterling bills, which ought to have accompanied same, we drew in their name or as their agents upon Henry Gore Booth, of Liverpool, and delivered same on the 10th September, 1850, to Dennistoun, Wood & Co., accompanied with bills of lading

for said 1,058 bales cotton, per Windsor Castle. There further appeared on 11th September, drafts as follows:

$5,000
5,000
2,000
1,000

$13,000, equivalent to £2,683 9*s.* 8*d.* sterling; which, again being unaccompanied by their sterling drafts, we drew as before, and delivered same to Dennistoun, Wood & Co., on 17th September.

These were followed on the 18th September, by the further amount of $12,047 $\frac{87}{100}$, making the aggregate $69,587; and, by the same mail, this was covered by their sterling drafts, as follows:

£5,000
5,000
4,417 14*s.* 11*d.*

£14,417 14*s.* 11*d.*

Which drafts were delivered, on 24th September, to Messrs. Dennistoun, Wood & Co., to replace and cancel those previously drawn by us, as herein stated, say for £11,845 16*s.* 4*d.*

This balance of £2,571 18*s.* 7*d.* being unlooked for either by Dennistoun, Wood & Co., or by my firm, was taken with much hesitation by them, and was so expressed to James Reid & Co., in letter and by telegraph to them of 18th September, as follows, in the following extract:—

"(We have thus telegraphed you to-day.) Always send invoice "amount with bill of lading, the last two bills being unlooked for, "and disappointing the buyers. We request you will be very par- "ticular in attending to this in future; Dennistoun, Wood & Co. "having sent on the bills of lading with the first batch of bills, "amounting to a little over £9,000, without being advised to inform "their house others were coming on."

2. To the second direct interrogatory he saith: As I have already stated, the transaction was secured by bills of lading of 1,058 bales of cotton, which I delivered up to Dennistoun, Wood & Co. with the first set of bills drawn by me as agent of James Reid & Co.; I do not know when the same was delivered up to Henry Gore Booth.

3. To the third direct interrogatory he saith: I know nothing further to benefit the plaintiff in this suit.

Cross 1. To the first cross-interrogatory he saith: In my answer to the first direct interrogatory, I have already stated fully the dates with reference to the entire transaction, as far as I know. I do not know the dates of the bills, or the exact date when forwarded. The amount of money received from Dennistoun, Wood & Co., was $70,098 69, equivalent to £14,417 14*s.* 11*d.* sterling, and paid to

the dollar drafts drawn on me by James Reid & Co., as mentioned in my answer to the first direct interrogatory.

2*d*. To the second cross-interrogatory he saith: The bills were drawn against 1,058 bales of cotton per Windsor Castle, consigned to Henry Gore Booth. The bill of lading was drawn, I believe, to order. Bills of lading were delivered to Dennistoun, Wood & Co. about 10th September, 1850.

3*d*. To the third cross-interrogatory he saith: I do not know on whose account Dennistoun, Wood & Co. purchased the bills, or the connection of their firm with plaintiffs. The bills were drawn in favor of James Reid & Co.

4*th*. To the fourth cross-interrogatory he saith: In effecting the negotiation with Dennistoun, Wood & Co. I stated that the cotton was purchased by James Reid & Co. on order of Henry Gore Booth.

5*th*. To the fifth cross-interrogatory he saith: I do not know and have not heard from the plaintiffs, or their agents, anything in answer to this question.

6*th*. To the sixth cross-interrogatory he saith: I have no personal knowledge how those proceeds were appropriated.

7*th*. To the seventh cross-interrogatory he saith: I am not personally cognizant of the arrangements made between Byrne and the plaintiffs, but I have heard it stated that the plaintiffs exacted from Byrne a verbal promise that in the event of further drafts appearing against the bill of lading which was to be given up to him, he would, as agent of Henry Gore Booth, accept the same, and apply the proceeds of the cotton towards their payment; that he afterwards did so accept the balance bill, but failed to apply the proceeds as promised to A. Dennistoun & Co., the plaintiffs.

JOSEPH BRAMWELL.

Subscribed and sworn to before me this 23d September, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Barrett's Deposition.

Robert Barrett, of the city of New York, aged twenty-eight years and upwards, being duly sworn, says:—

1*st*. To the first direct interrogatory he saith: I have been cashier of Dennistoun, Wood & Co., of New York, for three years.

2*d*. To the second direct interrogatory he saith: About the 9th September, 1850, J. Bramwell applied to us to negotiate sterling bills for the cost of 1,058 bales of cotton per Windsor Castle. The shippers of cotton in Mobile had neglected to send on the sterling bills, and we, Dennistoun, Wood & Co., took Bramwell's bills drawn as agent of James Reid & Co., of Mobile, for about £9,100, by steamer of 11th September, and a week after about £2,600 more, which I and Dennistoun, Wood & Co. thought was all that was to be

drawn against the shipment. Bramwell's bills were to be replaced by the sterling bills when they came on. Bramwell delivered Dennistoun, Wood & Co. the bills of lading for the cotton about the 9th September, and they were sent to the plaintiffs about the 11th.

The mail after we had sent the last bill from Bramwell, the sterling bills drawn by Reid & Co. came on, which proved to be some £2,571 more than the amount we had already negotiated for Bramwell. We paid for the excess and sent the bill over to plaintiffs. For this excess, £2,571 1*s.* 7*d.*, Booth's acceptance was taken on one of James Reid & Co.'s bills for £4,417 18*s.* 1*d.* I do not know when they where handed to the drawee of the bills, but I have heard that shortly after their arrival in Liverpool the bills drawn by Bramwell, as agent, were discounted and the bills of lading given up.

3*d.* To the third direct interrogatory he saith: I do not know anything further.

1*st.* To the first cross-interrogatory he saith: I did not negotiate these bills, and therefore cannot answer this question.

2*d.* To the second cross-interrogatory he saith: The bills were drawn against a shipment of 1,058 bales of cotton per Windsor Castle, consigned to order. Bills of lading were drawn to order received by Dennistoun, Wood & Co. about 9th September, 1850.

3*d.* To the third cross-interrogatory he saith: Dennistoun, Wood & Co. purchased the bills in the ordinary course of business, to remit to plaintiffs. The firms are connected in business. The bills of lading were to the order of the drawers.

4*th.* To the fourth cross-interrogatory he saith: I do not know.

5*th.* To the fifth cross-interrogatory he saith: I do not know.

6*th.* To the sixth cross-interrogatory he saith: I do not know.

7*th.* To the seventh cross-interrogatory he saith: I only know that Byrne was the agent of Booth.

ROBERT BARRETT.

Subscribed and sworn to before me, this 23d September, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Winthrop's Deposition.

Robert Winthrop, of the city of New York, aged nineteen years and upwards, being duly sworn, says:

1*st.* To the first direct interrogatory he saith: I know the plaintiffs, and have been a clerk with Dennistoun, Wood & Co. for four years; for the last four months as book-keeper—before that as shipping clerk.

2*d.* To the second direct interrogatory he saith: I know that the plaintiffs held a draft drawn by James Reid & Co., of Mobile, on H. G. Booth, for £4,417 14*s.* 11*d.*, accepted for £2,571 8*s.* 7*d.*, from having advised them of the transaction from the journal of Dennistoun, Wood & Co.

3*d*. To the third direct interrogatory he saith: I know that the original of a notice, of which I append a copy marked *A* (exhibit *A* hereto annexed,) was received in New York by Messrs. Dennistoun, Wood & Co., by the steamer Baltic, on the 1st of January, 1851. I mailed the original notice so received on the 1st January, 1851, addressed to James Reid & Co., Mobile.

4*th*. To the fourth direct interrogatory he saith: I know nothing else to benefit the plaintiffs.

1*st*. To the first cross-interrogatory he saith: I did not negotiate any bills as agent, and therefore have no answer to this cross-interrogatory.

2*d*. To the second cross-interrogatory he saith: I do not know anything of my own knowledge.

3*d*. To the third cross-interrogatory he saith: I know from the correspondence that Dennistoun, Wood & Co. purchased these bills in the regular course of business to remit to plaintiffs. The firms are connected so far as certain members are partners in both firms. I do not know to whose order the bills were drawn.

4*th*. To the fourth cross-interrogatory he saith: I know nothing in answer to this question.

5*th*. To the fifth cross-interrogatory he saith: I do not know.

6*th*. To the sixth cross-interrogatory he saith: I do not know.

7*th*. To the seventh cross-interrogatory he saith: I have heard that A. E. Byrne & Co. were the agents of Henry Gore Booth, and that they discounted the bills drawn by Bramwell, as agent, but did not pay the £2571 18*s*. 7*d*., acceptance of H. G. Booth of James Reid & Co. on which this suit is brought. I know nothing further.

ROBERT WINTHROP.

8*th*. To the eighth cross-interrogatory he saith: the notice of protest, a copy of which is hereto annexed, was received by the mail steamer Baltic in New York, by Dennistoun, Wood & Co., on 1st January, 1851, enclosed in a letter addressed to Dennistoun, Wood & Co., written by A. Dennistoun & Co., the plaintiffs.

I sent the notice of protest as clerk of Dennistoun, Wood & Co. by mail, on 1st January, 1851, to Mobile, addressed to James Reid & Co., Mobile. It was not sent to Isaac Bell.

9*th*. To the ninth cross-interrogatory he saith: I know nothing that may benefit the defendant.

ROBERT WINTHROP.

Subscribed and sworn to before me, this 23d day of September, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Notice of Protest.

Exhibit *A* to Winthrop's deposition, p'r Baltic.

LIVERPOOL, 13 *Dec.*, 1850.

MESSRS. JAMES REID & Co., Mobile.

GENTLEMEN: We regret we have to advise you that your draft on H. G. Booth for £4417 14*s.* 11*d.*, accepted for £2571 18*s.* 7*d.* (being the amount due, the balance of the amount having been accepted for in drafts of J. Bramwell & Co., "your agents,") was protested at maturity for non-payment, on 9th instant, and we look to you for payment of the same, and expenses.

We are, gentlemen,
Yours respectfully,
(Signed) A. DENNISTOUN & CO.

Original of above mailed by me this day, (1st January, 1851.)
ROBERT WINTHROP.

Commissioner's Certificate.

I, J. P. Girard Foster, a commissioner appointed by the City Court of Mobile, Mobile county, State of Alabama, by virtue of the annexed commission, do hereby certify that I caused Joseph Bramwell, Robert Barrett, and Robert Winthrop, the three witnesses named in the annexed commission, to come before me at sixty-nine Wall street, in the city of New York, on the twenty-third day of September, eighteen hundred and fifty-two; that the said Joseph Bramwell, Robert Barrett, and Robert Winthrop, were by me severally duly sworn upon the Holy Evangelists of Almighty God to make full, true, and perfect answers to the interrogatories and cross-interrogatories hereto annexed; that the answers of the said witnesses, numbered so as to correspond with the questions in writing, were correctly taken down by me, and transcribed in my presence by William Henry Byam, and that the testimony so taken down and transcribed was correctly and audibly read over to the said witnesses, Joseph Bramwell, Robert Barrett, and Robert Winthrop, and by them severally examined, subscribed, and sworn to in my presence. That the paper hereunto annexed, marked *A*, is the notice of protest mentioned and referred to in the deposition of Robert Winthrop.

J. P. GIRARD FOSTER,
Commissioner.

Interrogatories to Henry Orlando Jones.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Interrogatories to be propounded to Henry Orlando Jones, a witness residing in Liverpool, for and on behalf of the plaintiffs.

Interrogatory First. Have you any connection with the business of the plaintiffs? If yea, state the same and the length of time it has existed.

Interrogatory Second. Have you any knowledge of a shipment of cotton made to Liverpool in the year , by the defendant, as James Reid & Co., which cotton was forwarded by the ship "Windsor Castle?" Did you have in your possession at any time, the bill of lading for said shipment? If yea, describe the same.

Interrogatory Third. If you had in your possession said bill of lading, state how it came into your possession. Was it or was it not attached to sterling bills? and if so, describe the said bills, and give us the date when you received said bill of lading and said sterling bills.

Interrogatory Fourth. What became of said bill of lading and sterling bills? Were the sterling bills ever presented for acceptance? if yea, to whom? Were they accepted? if yea, by whom? If any name, other than that of the drawer, appears upon the acceptance, state under what circumstances.

Interrogatory Fifth. Were the sterling bills ever paid? If yea, by whom, under what circumstances, on what date? Was the bill of lading delivered up at that time, and as a part or condition of the payment of said , or was it returned after that time?

Interrogatory Sixth. At the time the bill of lading was delivered up, had the plaintiffs any knowledge of the existence of any other sterling bills drawn upon said shipment of cotton, or any knowledge of any intention to draw such bills? State the means you have of answering this question understandingly.

Interrogatory Seventh. At the time you delivered up the sterling bills aforesaid, was there any understanding or agreement with the acceptor as to other bills? With whom was this made? if by yourself, state under whose direction or order did you act, and what was the object or motive of it.

Interrogatory Eighth. Do you know anything of a sterling bill drawn by defendant on Henry Gore Booth for £4,417 14*s.* 11*d.*, due 9th December, 1851? If yea, state when the said plaintiffs first knew of its existence, and when it came into their possession. State also to whom it was presented, who accepted it, for what amount it was accepted, and if accepted for less than the amount of its face, the reason of this partial acceptance.

Interrogatory Ninth. If you say this bill was accepted, state who

wrote the acceptance; and if not written by Booth himself, state by whom and under what authority.

Interrogatory Tenth. Was this bill protested at maturity? If yea, state whether the Baltic was not the first steamer which left Liverpool after said protest for the States, and whether notice was forwarded by her to Messrs. Dennistoun, Wood & Co., of New York, of the non-payment of said bill.

Interrogatory Eleventh. If you know anything else to benefit the plaintiffs, state the same as though particularly interrogated.

P. PHILLIPS,
Sol's Pl'ffs.

Objections and Cross-Interrogatories for Defendant.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Defendant objects to each interrogatory of plaintiffs as irrelevant and leading.

Have you any interest in the event of this suit? Are you a partner, or have any interest in the plaintiffs' firm, or the firm of Dennistoun, Wood & Co. of New York?

Inter'y First. To whom did you give up the bill of lading? Was it not delivered to one A. E. Byrne? was it endorsed by you to him?

Second. Do you not know that Byrne retained the proceeds, or a part thereof, to cover himself from loss on Booth's account, arising out of other matters?

Third. Did not the plaintiffs know that Booth was the purchaser of the cotton, and that defendant had only acted as agent in the purchase?

Fourth. Was not Booth at the time you gave up the bill of lading, considered by the plaintiffs in rather doubtful credit? Had he any visible wealth? Did he own property, and what? Was he engaged in any permanent established business at the time, or was he a mere speculator?

Fifth. Do you know whether Byrne promised plaintiffs that if they would give up to him the bill of lading, that he would see that the proceeds were applied to the payment of the bills drawn on the shipment? State what you do know of any promise of the character alluded to.

Sixth. At the time plaintiffs gave up the bill of lading, did he not suspect that there would be other bills, drawn on said shipment, come on for payment? Was Byrne good?

Seventh. Were the drafts that were sent on with the bill of lading accepted and returned to plaintiffs? How long afterwards before they were paid; and were they paid before they were due? When were they due?

Eighth. Where was Booth during all the time this was going on? Did the plaintiffs have any intercourse with him personally?

Ninth. What day in the month of December, 1850, did the steamship "City of Glasgow" leave Liverpool for Philadelphia? State anything else you may know that may benefit the defendant on the trial of this suit.

TAYLOR & HITCHCOCK,
Deft's Att'ys.

Affidavit waived, and consent that commission may issue, March 15, '53.

T. & H., *Def'ts Att'ys.*

Commission to take Jones' Deposition.

THE STATE OF ALABAMA, MOBILE COUNTY,
City Court of Mobile:

To JOHN WHITLEY, ROBERT HIGGIN and THOMAS JOYNSON, Esqrs., greeting:—

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or either one of you, full power and authority to examine Henry Orlando Jones, on the direct and cross-interrogatories hereto annexed, as witness in a cause pending in our said Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore, we command you or either one of you, that at such time and place, or times and places, as may suit your convenience, you do cause the said Henry Orlando Jones to come before you, or either of you, and then and there examine him on oath as witness in the cause aforesaid, and that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said City Court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, Clerk of our said City Court of Mobile, [SEAL.] at office, this fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

Attest: REUBEN A. LEWIS,
Clerk.

Henry Orlando Jones' Deposition.

The said Henry Orlando Jones, of Liverpool, in the County of Lancaster, bookkeeper, having been duly sworn, and being examined on the interrogatories annexed to the said commission, made the following answers thereto:—

1*st.* To the first interrogatory: I have been a clerk in the office of

Messrs. A. Dennistoun & Co., of Liverpool, the plaintiffs, for upwards of twenty years; the last twelve of which I have been cash-keeper.

2*d*. To the second interrogatory: I remember the shipment of cotton of 1,058 bales per Windsor Castle, shipped by James Reid & Co., of Mobile, in 1850, referred to in this interrogatory. I received the bill of lading thereof on the 23d September, 1850, attached to five bills drawn by J. Bramwell & Co., as agents for James Reid & Co., on Henry Gore Booth, amounting together to £9,162 6 8. The bill of lading was dated Mobile, 24th August, 1850, was signed by Charles C. Sampson, as master of the Windsor Castle, which was stated to be then in the port of Mobile, and bound for Liverpool; the marks and numbers of the same 1,058 bales were in the margin, as follows:—

H	×	E	1	57	57
G	×	O	1	287	287
E	×	S	1	337	337
O	×	N	1	274	274
A	×	D	1	103	103

And the said cotton was made deliverable to order on payment of freight at $\frac{3}{8}$ths of a penny sterling per pound weight, delivered with primage and average accustomed, and the same were endorsed in blank "*P. pro* James Reid & Co., William Moult, Jr."

3*d*. To the third interrogatory: The bill of lading came into my possession as cash-keeper of A. Dennistoun & Co., it having been handed to me on receipt thereof, together with the five bills referred to in my last answer, by Mr. William Craig Mylne, one of the partners in the plaintiffs' house; it was attached to the said five bills, the particulars whereof are as follows: all drawn by Joseph Bramwell & Co., therein described as agents for James Reid & Co., Mobile, upon Henry Gore Booth, Esquire, Liverpool, payable to the order of Messrs. Alexander Dennistoun & Co., dated New York, 9th September, 1850, payable sixty days after sight, for value received, the same to be charged to account of 1,058 bales of cotton per Windsor Castle, as advised; and the said bills were drawn in three parts, and one of the said bills was for £2,162 6 8, another for £2,000, another for £2,000, another for £1,500, and another for £1,500. The date at which I received the said bills of lading and sterling bills was on the twenty-third day of September, 1850, on which day the same reached the hands of the said A. Dennistoun & Co.

4*th*. To the fourth interrogatory: I presented the five said bills for acceptance on the said twenty-third day of September, at the office of A. E. Byrne & Co., Liverpool, where the business of the said Henry Gore Booth was transacted, and they were accepted, I believe, by A. E. Byrne, per procuration for H. G. Booth; but I am not certain as to this, as some of the bills were accepted by Mr. Booth himself—they were accepted either by him or Mr. Byrne, as his agent. At that time I retained the bill of lading until the said

bills were paid to which it was attached; whereupon it was given up to Mr. Byrne as agent for Mr. Booth. It was so delivered up on the 26th September, 1850, upon Mr. Byrne's paying the said bills.

5th. To the fifth interrogatory: The said sterling bills were paid by A. E. Byrne upon the twenty-sixth September, 1850, under discount. The bill of lading was at the same time delivered up to him on condition of the said payment of the said five bills.

6th. To the sixth interrogatory: At the time the bill of lading was delivered up the plaintiffs had no knowledge of any other sterling bills drawn upon the same shipment of cotton, or any knowledge of any intention to draw such bills. From my position as cash-keeper and confidential clerk of the plaintiffs all the correspondence of the house and books are open to me, and it is my duty to inspect them daily, and to make entries therefrom.

All bills of exchange with bills of lading attached, and all bills of exchange without any bill of lading attached, are deposited with me immediately on receipt, and in particular all advices or relating to bills drawn, or to be drawn, or to be sent forward against any shipments, are seen by me immediately on receipt, it being part of my duty to attend to the business arising thereout.

7th. To the seventh interrogatory: At the time I delivered up the sterling bills aforesaid, there was an understanding or agreement verbally made with Mr. Byrne as agent for Mr. Booth, that he should pay any other bills that might appear against the said shipment. It was made by myself with Mr. Byrne on delivering up the bill of lading. I did not act under any special direction or order, but I did it without consulting any one; because, although the plaintiffs had no advice or knowledge of any bills beyond those already referred to, I thought it possible that others might afterwards appear against the said shipment.

8th. To the eighth interrogatory: I do know of a sterling bill drawn by the defendant under his firm of James Reid & Co. on Henry Gore Booth, for £4417 14 11, due ninth December, 1850—The plaintiffs first knew of its existence on the seventh of October, 1850, but the plaintiffs had previously, viz: on the thirtieth September, 1850, received advices of other bills in addition to those amounting to £9162 6*s.* 8*d.* on H. G. Booth, drawn by J. Bramwell & Co. as agents for James Reid & Co. for £2683 9 8, making, together with the previous bills, £11,845 16 4, all against the said cotton, which they were advised were so drawn in New York in consequence of the Mobile bills not having come on, but these latter were to be remitted to the plaintiffs for the purpose of being substituted for those drawn in New York.

The plaintiffs, therefore, knew on the thirtieth September, 1850, but not before, that certain Mobile would be sent forward, and this one for £4417 14 11 afterwards came forward on the seventh of October, 1850, as one of such Mobile bills so referred to. The bill for £4417 14 11 came into possession of the plaintiffs on the

seventh October, 1850, when it was presented, as usual, at the office of A. E. Byrne, as the agent for Mr. Booth, and it was accepted, either by him as such agent, or by H. G. Booth himself for £2571 18 7, only that being the balance of the cost of the said 1058 bales of cotton. The reason of this partial acceptance was, that the plaintiffs had already received payment of the bills drawn against the cotton for £9162 6 8, and held other like bills accepted by Booth for £2683 9 8, which were paid on the 21st October, 1850, and the plaintiffs were therefore not entitled to an acceptance for more than the balance of the cost of the cotton, namely, £2571 18 7, making in all £4417 14*s.* 11*d.*

9*th.* To the ninth interrogatory: The bill for £4417 14 11, was accepted for £2571 18 7 on the 7th October, 1850, by A. E. Byrne as agent for H. G. Booth, per procuration, and was, I believe, in the handwriting of A. E. Byrne, by authority from Mr. Booth, as he acted as his agent throughout.

10*th.* To the tenth interrogatory: The said bill was protested for non-payment at maturity, and the protest thereof was forwarded by the Baltic to Dennistoun, Wood & Co., New York, and notice thereof was also forwarded by the Baltic, to James Reid & Co., Mobile. The Baltic was the first mail steamer that left Liverpool for the United States, after the said protest, and she sailed, I believe, on the 14th December, 1850.

11*th.* To the eleventh interrogatory: I am not aware of anything else to benefit the plaintiffs, unless it be that a letter of thirtieth November, 1850, sent by Mr. Mylne to Mr. Byrne in the name of the plaintiffs' firm, was written under misapprehension, on the part of Mr. Mylne, of what had passed between Mr. Byrne and myself. The understanding or agreement entered into by Mr. Byrne was so entered into as agent of Mr. Booth. On the same day, the thirtieth November, the letter now produced and marked *A*, was received by the plaintiffs from Mr. Byrne.

1*st.* To the first cross-interrogatory: I have no interest in the event of this suit. I am not a partner, and have no interest in the plaintiffs or the firm of Dennistoun, Wood & Co., New York. I gave up the bill of lading to Andrew E. Byrne, as agent for H. G. Booth; it was not endorsed by me to him; it had been previously endorsed in blank by the shippers.

2*d.* To the second cross-interrogatory: I do not know.

3*d.* To the third cross-interrogatory: I do not know that the plaintiffs knew the matters inquired into in this interrogatory; I did not myself know the fact, and I believe that the plaintiffs did not know.

4*th.* To the fourth cross-interrogatory: I do not believe that the plaintiffs considered that Booth, at the time referred to, was in doubtful credit; I did not myself believe it; I do not know as to his property, but he was considered to have made money, and he was engaged in business only, I believe, as a speculator, and that occasionally.

5th. To the fifth cross-interrogatory: No such promise was made as a condition for the giving up of the bill of lading, nor do I know of any promise, other than the understanding or agreement referred to in my answer to the seventh interrogatory in chief.

6th. To the sixth cross-interrogatory: I do not know what the plaintiffs may have suspected, but I myself thought it probable that other bills drawn on said shipment might come on for payment, although the plaintiffs had no advice or knowledge of any such bills at the time they gave up the bill of lading, beyond the said bills for 9,162*l.* 6*s.* 3*d.*; other bills to the amount of 2,683*l.* 9*s.* 8*d.* and afterwards come forward on the 30th September, 1850, as already stated, and were ultimately paid by Byrne as agent for Booth. Byrne was considered in fair credit and quite respectable.

7th. To the seventh cross-interrogatory: The drafts that were sent on with the bill of lading, were accepted on the 25th of September, and returned to the plaintiffs on the following day, and were paid on the 26th September, 1850; they were not due till the 25th November, 1850.

8th. To the eighth cross-interrogatory: I saw Mr. Booth during part of the time; I do not know whether the plaintiffs had or had not any intercourse with him personally.

9th. To the ninth cross-interrogatory: The steamship City of Glasgow left Liverpool for Philadelphia on or about the eleventh December, 1850; she appears to have cleared out on the eleventh; she is a screw steamer, and was not a mail steamer. Where a mail steamer is sailing within a few days, it is not usual to send letter of any importance by a screw steamer. I do not know of anything else to the benefit of the defendant on the trial of this suit.

HENRY ORLANDO JONES.

Taken, signed and sworn, this tenth day of May, 1853, by virtue of the commission hereunto annexed.

ROBERT HIGGIN.

I hereby certify that the witness, Henry Orlando Jones, has been credibly introduced to me, and has been proved to my satisfaction to be the person of that name referred to in the commission, as a witness to be examined before me.

ROBERT HIGGIN.

Exhibit A. Letter from Byrne to Dennistoun & Co., referred to in the answer to the 11th Direct Int'y.

MESSRS. A. DENNISTOUN & Co., Liverpool.

DEAR SIRS:—In reply to your letter respecting an acceptance of Mr. Henry Gore Booth for 2,571*l.* 18*s.* 7*d.* I beg leave to say, that

my impressions regarding it are not in keeping with yours, and that I do not consider myself in any bound for its payment.

Yours, respectfully,

AND. E. BYRNE.

Beauford Place, 30th Nov., 1850.

This is the letter mentioned to be marked *A*, and referred to by Henry Orlando Jones in his answer to the eleventh interrogatory in chief, taken before me this 10th day of May, 1853.

ROBERT HIGGIN.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Interrogatories to be propounded to Andrew E. Byrne, a witness to be examined in behalf of the plaintiffs.

Interrogatory First. Do you know anything of a shipment of cotton per Windsor Castle, say 1,058 bales, forwarded by the defendant, and consigned to Henry Gore Booth? If yea, state whether you ever came into the possession of the bill of lading of said cotton; and if so, describe the circumstances, when, and from whom.

Interrogatory Second. Were you acting, in thus receiving the said shipment, upon your own account or for another? If the latter, state for whom you acted, in what capacity, and the extent of your authority.

Interrogatory Third. If you state the time you received the bill of lading, and that it was accompanied with sterling bills, say whether you know any fact which would tend to show that the plaintiffs knew of any other sterling bills which were drawn, or intended to be drawn upon this shipment.

Interrogatory Fourth. Do you know anything of a sterling bill drawn by defendant upon Henry Gore Booth, of £4,417 14*s.* 11*d.*, due 9th December, 1850? If yea, state who accepted the same, and for what amount.

Interrogatory Fifth. In receiving the bill of lading, and the shipment it represented, and making the acceptances, state whether you acted in your individual right, or as a mere agent.

Interrogatory Sixth. On whose account was this shipment made? If you say it was for Mr. Booth's, state whether said Booth did not receive all of said shipment and enjoyed the full benefit of its proceeds.

Interrogatory Seventh. Why was not the said bill paid at maturity? If it was owing to the failure or bankruptcy of any of the parties, state when the same occurred.

Interrogatory Eighth. If you answer that the shipment was made exclusively upon the account of Booth, and the defendant acted only as agent in the purchase, state what was the extent of that interest, as to the amount of compensation, commissions, &c.

Interrogatory Ninth. When the first sterling bills were presented, did you pay the same? and did or did you not demand the surrender of the said bill of lading as a condition? would you have paid the bills and permitted the party to retain the bill of lading?

Interrogatory Tenth. If you know anything to benefit the plaintiffs, state the same as if particularly interrogated.

P. PHILLIPS,
Sol'r for Pl'ffs.

Filed February 26, 1853.

REUBEN A. LEWIS,
C'lk.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Defendants' objections and cross-interrogatories to Andrew E. Byrne, witness for plaintiffs.

1. The defendant objects to the witness, on the ground that he is interested, and propounds the following cross-interrogatories to be used in case his objections are overruled, and the deposition permitted to go to the jury.

Interrogatory First. Who composed the firm of A. E. Byrne & Co.?

Second. Was A. E. Byrne & Co. the agent of Booth in the transaction alluded to, or do you say that you, *individually*, was his agent? If you acted under any written power or authority, say so, and attach a copy to your answer.

Third. Where did Booth reside, and what was his occupation? Was he located or established in any particular business, or was he a general speculator? Had he much or any visible property, real or personal?

Fourth. Were the 1,058 bales of cotton sold by you, and did you receive the proceeds? For what amount did the 1,058 bales sell for? Did it sell for enough? Or, if it had been sold to meet the bills drawn on it, would it not have produced enough to pay the whole amount accepted for by Booth?

Fifth. If you answer in the direct interrogatories that Booth received the benefit of the proceeds, do, if you please, state in what way he enjoyed this benefit: Did he get personally the cotton, or did he receive in his own hands one cent of the proceeds? If so, state how much and when? Or if you state his debts were paid with it, then state to whom these debts were paid, when they accrued, and how they originated.

Sixth. Was Booth indebted to you or your firm, and did you apply any of the proceeds of the cotton to his indebtedness? how much over and above the amounts you paid on the drafts?

Seventh. Were not the bills accepted and returned to Dennistouns

immediately on presentation; and did they not then hold both bills and bill of lading; and did you not afterwards cash the bills, say about £9,000, on their giving you up the bill of lading? Did Booth cash these bills before due with his own money, or did you or your firm cash them? If you undertake to say that Booth paid the money, please state, if you can, from whom he got it; what security was given by him for it. Please state the day you paid the drafts, and the bills of lading were delivered to you. Was any assignment written on the B. L. by Dennistouns at the time it was handed over to you? If so, add a copy of it to your answer.

Eighth. Did not the plaintiffs expect other bills to come, drawn on the shipment, at the time they delivered to you the bill of lading? Did they, or some one of them, speak of the probability of other bills coming on?

Ninth. What kind of business does your firm; is it your business to sell cotton, or buy bills of exchange?

Tenth. Is there any fixed custom among the merchants of Liverpool as to the mode of paying for cotton bought in the United States; is money or cash ever sent on? Is the purchase-money alway drawn for by sterling bills on the purchaser?

Eleventh. Were the first batch of bills paid before their maturity?

Twelfth. Do you know any fact that in your judgment might benefit the defendant on this trial? If yea, state it fully, and answer this on your oath.

TAYLOR & HITCHCOCK,
Defendant's Attorneys.

Filed February 26th, 1853.

REUBEN A. LEWIS,
Clerk.

Commission to take Byrne's Deposition.

THE STATE OF ALABAMA, MOBILE COUNTY,
City Court of Mobile:

To JOHN WHITLEY, ROBERT HIGGIN, and THOMAS JOHNSON, Esqrs, greeting:—

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you or either one of you, full power and authority to examine Andrew E. Byrne on the direct and cross-interrogatories hereto annexed, as witness in a cause pending in our said Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant; and therefore we command you, or either one of you, that at such time and place, or times and places, as may suit your convenience, you do cause the said Andrew E. Byrne to come before you, or either of you, and then and there examine him on oath as witness in the cause aforesaid; and that

you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said City Court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, Clerk of our said City Court of Mobile, this 22d day of March, in the year of our Lord one thousand eight hundred and fifty-three.

Attest: REUBEN A. LEWIS,
Clerk.

Byrne's Deposition.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

THE STATE OF ALABAMA,
City Court, Mobile County:

The examination of Andrew E. Byrne, a witness produced, sworn, and examined on behalf of the plaintiffs, under and by virtue of an order or commission issued by this Court on the 22d day of March, 1853, taken at the office of Messrs. Duncan, Squarey & Duncan, No. 2 Exchange street, West Liverpool, before Robert Higgin, Esq., on the sixth of May, 1853. The said Robert Higgin appointed John Price the clerk to the commission, and, before proceeding to the execution of the commission, administered to him the oath of faithful administration.

The said Andrew E. Byrne, of Liverpool, in the county of Lancaster, merchant, having been duly sworn, and being examined on the interrogatories annexed to the said commission, made the following answers thereto:—

1*st.* To the first interrogatory: I do know of a shipment of cotton p. Windsor Castle, being 1058 bales, forwarded by the defendant and consigned to Henry Gore Booth. I became possessed of the bill of lading thereof on or about the 26th September, 1850. I received it from the plaintiffs, in payment of Mr. Henry Gore Booth's acceptances against the same to the amount of £9,162 9*s.* 8*d.*, and on my agreeing to pay two other bills, amounting together to £2,683 9*s.* 8*d.*, also drawn against the same, but not then come forward.

2*d.* To the second interrogatory: I acted in the said transaction solely as the agent of Mr. Henry Gore Booth, and my authority was verbal to arrange for the delivery of the cotton to me on payment of the above mentioned bills, and to sell it on account of Mr. Booth.

3*d.* To the third interrogatory: The time I received the bill of lading, as before mentioned, Mr. Booth informed me that the bills mentioned in my answer to the first interrogatory, amounting respectively to £9,162 6*s.* 8*d.* and £2,683 9*s.* 8*d.*, had been drawn against the

said shipment. I had no knowledge or suspicion of any other bill having been drawn against it, and I have no reason to think that the plaintiffs were aware of any other bill drawn or intended to be drawn against the shipment.

4*th*. To the fourth interrogatory: I do know of the sterling bill drawn by the defendant upon Henry Gore Booth, for £4,417 14*s*. 11*d*., due 9th December, 1850. I accepted the same to the extent of £2,571 18*s*. 7*d*. for procuration for Mr. Booth, and at his request.

5*th*. To the fifth interrogatory: I received the bill of lading and the shipment it represented, and gave the acceptance last referred to merely as an agent for Mr. Booth. The bills mentioned in my answer to the first interrogatory were accepted by Mr. Booth himself.

6*th*. To the sixth interrogatory: The shipment was made on Mr. Booth's account, and he received the full benefit of the proceeds thereof on account current with me.

7*th*. To the seventh interrogatory: The bill referred to as having been accepted by me for £2,571 18*s*. 7*d*. for procuration for Mr. Booth, was not paid at maturity, owing to Mr. Booth's failure, which happened on or about the 15th of November, 1850.

8*th*. To the eighth interrogatory: I cannot answer this interrogatory, having no knowledge of the subject.

9*th*. To the ninth interrogatory: The first sterling bills were not paid immediately on presentation, but they were paid three days afterwards, when I made it a *sine qua non* that the bill of lading should be delivered up to me. I would not have paid the bills except on this condition, and would not have permitted the holders to retain the bill of lading.

10*th*. To the tenth interrogatory: I know not, except that I am not in any way interested in the result of this suit, and except that, in reply to a letter from the plaintiffs to me, dated 30th November, 1850, from which they appeared to be under an erroneous impression as to what had passed verbally between me and them, I intimated to them that I did not consider myself in any way bound for payment of the said acceptance for £2,571 18*s*. 7*d*., such information was conveyed to them by letter, dated, and sent to them on the 30th November, 1850, which is now produced and marked *A*. In point of fact, I never entered into any agreement or understanding with the plaintiffs, that if they should receive further bills beyond the said bills for £9,162 6*s*. 8*d*. drawn against the said shipment, I would protect them to the extent of the proceeds of the cotton, except so far as related to the said bills amounting to £2,683 9*s*. 8*d*. which I did engage to pay, as already stated, and I did not enter into any personal engagement to pay the said acceptance for £2,571 18*s*. 7*d*.

1. To the first cross-interrogatory: I am the only individual carrying on business under the firm of A. E. Byrne & Co.

2. To the second cross-interrogatory: The business was transacted in the name of my firm, so far as custom-house business and general business transactions were concerned, but the acceptance for procura-

tion of Mr. Booth was given in my individual name. I had no written authority from Mr. Booth.

3. To the third cross-interrogatory: Mr. Booth resided in Helensburgh on the Clyde, in Scotland; he was a ship owner and importer of cotton; he had no other business that I am aware of; his visible property, so far as my knowledge extended, consisted of three vessels, which were apparently unincumbered, worth about £17,000.

4. To the fourth cross-interrogatory: The 1,058 bales of cotton were sold by me, and I received the proceeds, namely, 14,578*l.* 13*s.* 8*d.*, which were more than sufficient to pay the whole amount of the bills drawn on it, and accepted by Mr. Booth.

5. To the fifth cross-interrogatory: Mr. Booth did not personally get the cotton, nor did he personally receive any of the proceeds, but he got the benefit of the whole. The proceeds were first applied in repayment of the bills mentioned in my answer to the first interrogatory in chief, amounting together to 11,845*l.* 16*s.* 4*d.*, drawn against the shipment, which I had paid for Mr. Booth, and the balance was placed to his credit in account with me, he being then indebted to me in more than the amount of such balance, in respect of advances made to him. I had a large running account with him, extending over about three years, and after receiving the bill of lading for the cotton by the Windsor Castle, I advanced moneys on his account, exceeding the balance of the said shipment so placed to his credit.

6. To the sixth cross-interrogatory: Booth was indebted to me, as stated in the preceding answer, and I applied the sum of 2,732*l.* 13*s.* 4*d.*, less interest, being the balance of the proceeds of the said cotton, towards repayment of his indebtedness to me, as stated in my preceding answer, over and above the amounts paid on the said drafts.

7. To the seventh cross-interrogatory: The bills for 9,162*l.* 6*s.* 8*d.* were accepted and returned to Dennistouns immediately after presentation, and they then held both bills and bill of lading. I afterwards cashed the bills for 9,162*l.* 6*s.* 8*d.* on their giving up the bill of lading; and at the same time I verbally engaged the further bills for 2,683*l.* 9*s.* 8*d.*, which were the only bills against the shipment so far as I know. Booth did not cash these bills before they became due, but I did. I paid the drafts for 9,162*l.* 6*s.* 8*d.* on the 26th September, 1850, when the bill of lading was given up to me; and I paid the further drafts for 2,683*l.* 9*s.* 8*d.* on the 21st of October, 1850, according to my agreement. There was no assignment of the bill of lading to me by Dennistoun, except by handing it over to me. It was simply endorsed in blank by the shipper, as usual.

8. To the eighth cross-interrogatory: The plaintiffs expected other bills to come forward against the shipment at the time they delivered to me the bill of lading, namely, the said bills amounting to 2,683*l.* 9*s.* 8*d.* To the best of my knowledge and belief, they did not expect any other bills, and they certainly did not speak of or allude to any others.

9. To the ninth cross-interrogatory: My business is that of a

ship-owner and American commission merchant. It is my business to sell cotton, but not to buy bills of exchange.

10. To the tenth cross-interrogatory: The usual custom in Liverpool, is to pay for cotton purchased in the States by bills at sixty days sight on the importers, who sometimes pay the bills before maturity, under discount, particularly when the bill of lading accompanies the bills drawn against the shipment; money or cash is very seldom sent on.

11. To the eleventh cross-interrogatory: The first batch of bills were paid before maturity.

12. To the twelfth cross-interrogatory: I do not know of any such fact.

AND. E. BYRNE.

Taken, signed and sworn, this sixth day of May, 1853, before me, by virtue of the commission hereto annexed.

ROBERT HIGGIN.

I hereby certify that the witness, Andrew E. Byrne, is personally known to me.

ROBT. HIGGIN,
Commissioner.

A, Exhibit referred to in Byrne's Deposition.

Messrs. A. DENNISTOUN & Co., Liverpool.

DEAR SIRS: In reply to your letter respecting an acceptance of Mr. Henry Gore Booth's for £2,571 18*s.* 7*d.*, I beg leave to say that my impressions regarding it are not in keeping with yours, and that I do not consider myself any way bound for its payment.

Yours respectfully,
AND. E. BYRNE.

Beauford Place, 30th November, 1850.

Commr's Endorsement.

This is the letter mentioned to be marked *A*, and referred to by Andrew E. Byrne, in his answer to the tenth interrogatory in chief, taken before me this 6th day of May, 1853.

ROBT. HIGGIN.

Commission to take Deposition of Stewart & Livingston.

THE STATE OF ALABAMA, MOBILE COUNTY,
City Court of Mobile,

To DUNCAN J. WEIR, Esq., greeting:—

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to examine Andrew Stewart and Charles S. Livingston as witnesses in a cause pending in our said Court, wherein A. Dennis-

toun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore we command you that on the first day of June, 1852, between the hours of 9 o'clock A. M. and 4 o'clock P. M., in the town of Greenock, of Scotland, in the kingdom of Great Britain, and at the place of business of D. Weir & Co. of said town, you do cause the said witnesses to come before you, and then and there examine them on oath as witnesses in the cause aforesaid; and that you do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into our said City Court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, Clerk of our said City Court of Mobile, at office, this 27th day of April, in the year of our Lord one thousand eight hundred and fifty-two.

Attest: REUBEN A. LEWIS, *Clerk.*

Let the plaintiffs or their attorneys have thirty days' notice of the time and place of executing this commission.

REUBEN A. LEWIS, *Clerk.*

A. DENNISTOUN & Co.
vs.
ROGER STWART.

At Greenock, the first day of June, eighteen hundred and fifty-two years, at 1 o'clock P. M.

In execution of a commission, dated twenty-seventh April last, issued from the Honorable the Judges of the City Court of Mobile, Alabama, directed to me, Duncan Weir, merchant in Greenock, as commissioner, and empowering him to take the evidence of Andrew Stewart and Charles S. Livingston in a certain cause depending in said Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant, where then appeared before the said Duncan Weir, on the part of the plaintiffs, William Crawford, merchant in Glasgow, accompanied by Jno. Anderson Kirkwood, Solicitor in Glasgow, and on the part of the defendant, Jno. Hugh Dempster, writer in Greenock. Whereupon the Commissioner made choice of one David Glassford, writer in Greenock, to act as clerk to the commission, and to him he administered an oath, that he would faithfully discharge the duties of his office.

And thereupon there was adduced as witnesses on behalf of the defendant the said Charles S. Livingston, merchant, Glasgow, who being solemnly sworn and examined upon the Holy Evangelists of Almighty God, did testify and depose as follows, to wit:—

Livingston's Deposition.

I know who the parties to this suit are. I was at one time agent for the defendant in this country, and still do some things for him, but I am not now his acting agent. I am a Cotton Broker in Glasgow. In 1850 I knew a gentleman called Booth—Henry Gore Booth. He had no place of business to my knowledge, but he did business in

Liverpool, Glasgow and Greenock. He imported cotton into Liverpool, and he did his business through the medium of both merchants and brokers. In the year 1850, he ordered fifteen hundred bales of cotton from Mobile through me. I employed a house in Mobile to make the purchase, and that house was James Reid and Company. Messrs. Reid & Co. in that matter acted as commission agents and not as principals. I furnished them with instructions respecting the matter. The order was signed by Mr. Booth, specifying the number of bales, and the price was without limit. The price was to be drawn for at sixty days' sight, in the usual way. I have in Glasgow an exact duplicate of the order I sent Reid & Company, and I think it is copied in my letter book, and I will on my return to Glasgow send to the Commissioner an exact copy of it, certified as a true copy by me. It is usual to send home the drafts for the price of cotton, either with or without bills of lading attached; but this is done both ways. The cotton, I believe, arrived in this country by ship Windsor Castle.

Being interrogated. Is it usual in the cotton trade for the shippers to draw first for a specific sum, and thereafter for the balance of the invoice, when the weights are finally ascertained?

I answer. Wherever the transaction is large, this is almost always done. I know who the plaintiffs are. I understand they have houses in Liverpool and New York. I understand they are merchants and exchange brokers, and commission agents. I never have done business with them. It is not usual for the shippers to send the exchange to be sold in New York. It is usual to sell it in Mobile; but the exchange buyers there may (in cases of cotton transactions) send the exchange to New York.

Interrogated. When bills of lading are attached, is it understood, according to the custom of merchants, that the goods are thereby specially appropriated to meet the contents of the bills of exchange or price of the goods?

I answer: Yes, as far as they will go.

Interrogated. Supposing that the proceeds are sufficient to meet the price, but the holder delivers up the bills of lading to an irresponsible individual, or otherwise gives up the security which the attached bills of lading afforded, without consulting with the drawers, does he by such conduct, according to the custom of merchants, relieve the drawer from responsibility?

Answer. I should say he would. I believe the Messrs. Dennistoun's house in New York were the buyers of exchange in this case. I have seen a man called Byrne; he is a merchant in Liverpool. I understand that the plaintiffs' house, in New York, send home the exchange they buy to Liverpool or Glasgow. I do not know that in the case in question a batch of bills was drawn for the price. I know that Byrne was in the practice of signing bills per procuration of Booth. I do not know that he signed the bills for this particular cargo. Booth became bankrupt. I know nothing of Byrne's circumstances.

And the witness being thereafter cross-examined on behalf of the plaintiffs, does further testify and depose:—

Byrne was Booth's acknowledged agent in Liverpool. Booth was solvent, as far as I know, before I sent the order to Reid & Company. I thought him solvent. I would not have sent the order if I had not thought so. I was never either in Mobile or New York. I never carried on business in Liverpool. The custom of merchants to which I have spoken is observed, or obtains in the transactions betwixt merchants in America and Great Britain.

Interrogated. When bills of lading are attached to bills of exchange, do you mean that the goods are thereby specifically appropriated to the bills of exchange, or do you mean that the goods are thereby specifically appropriated to meet the price of the goods?

I answer: That the bills of lading are given in security to the purchasers of exchange for payment of the bills of exchange attached. The bills of exchange generally represent the price of the goods specified in the bill of lading, where they are the payment of *bona fide* purchases.

Interrogated. How does a purchaser of exchange receiving bills of exchange with bills of lading attached know whether or not the bills of exchange are for the precise price of the goods?

I answer: It is not necessary for him to know it. I think he takes the bills of lading merely as security for payment of the bills of exchange attached to them.

Interrogated. When the bills of exchange are retired, has the purchaser or holder of exchange, according to the custom of merchants, any right to retain the bills of lading unless specially instructed to do so?

I answer: None.

Interrogated. Is it not usual for a shipper of cotton to pay a part of the purchase-money thereof himself, and to draw and sell bills of exchange for the remainder, attaching the bills of lading to these bills of exchange?

Answers: I do not recollect of ever hearing of such having been done.

Interrogated. Do purchasers of bills of exchange usually give the full price of the shipment of cotton, represented by bills of lading attached to such bills of exchange?

Answers: I do not know. In so far as that is concerned, I do not know the custom of merchants in Mobile and New York.

Being referred to what you say about it being unusual to send exchange to be sold in New York, and its being usual to sell it in Mobile, and being interrogated whether you know this from any experience of your own—

Answers: I never was either in New York or Mobile. I have no transactions as a buyer of exchange.

Re-interrogated for the defendant. I do not know the exact date at which Booth's credit became doubtful. I think it was from the

middle to the end of November, 1850, that it came to my knowledge that Booth's credit was doubtful in England. It must have been doubted for some short time before it came to my knowledge. It must have been known to some before it was currently known. I did not think that Byrne was in good credit at that time.

Interrogated. Referring to your previous answers, that in large cotton transactions specific sums are first *are first* drawn for, and thereafter what is called the balance bill, to cover the exact price, according as it may be finally ascertained by the weights and quantities of the goods, supposing that the holder of the bills of lading for the entire cargo receives them as a security not only for the specific bills, but also for the balance bill, and parts with the bills of lading to a third party upon an agreement made with him, that he takes up and retires the balance bill when it comes to hand, but such third party fails to do so, and appropriates the proceeds of the goods to his own use, seeing that the holder trusted to the good faith of the party he was dealing with, but was disappointed, and did not communicate his transaction to the drawer of the bill, according to the custom among merchants, would such an act relieve the drawer, who was thereby deprived of his security?

Answers: I do not think that the drawer of the bills should be responsible in the circumstances supposed.

Reinterrogated for the plaintiffs, he did further testify and depose, and—

Interrogated. Are bills of exchange drawn sometimes against purchases, and sometimes against consignments?

I answer: Yes.

Interrogated. Has a buyer of exchange, unless specially informed, any means of knowing whether the bills are drawn against either one or the other?

Answers: No.

Interrogated. Has a buyer of exchange, unless specially informed, any means of knowing that there is to be a balance bill coming against a particular shipment?

Answers: No.

All of which is truth, as this deponent shall answer to God.

CHAS. S. LIVINGSTON.

1. *Booth's Order to Reid & Co.*

Exhibits to Livingston's Deposition.

GLASGOW, 18*th July*, 1850.

Messrs. JAMES REID & Co., Mobile:

GENTLEMEN: I hereby authorize you to purchase and ship to Liverpool, during the 1850 cotton season, on my account and risk, say before 1st Oct'r, 1,500 bales of cotton, without limit, to be shipped as soon as possible, you doing your best to select the relatively

cheapest qualities. I would prefer your shipping on 3 different vessels, but allow you to arrange this for my interest. That you will give me timely advice of purchase and orders for insurance. That your drafts at sixty days' sight, payable in London, for amount invoice of any shipment of cotton you may make upon this order, shall be accepted on presentation by

(Signed) HENRY GORE BOOTH.

GLASGOW, 3*d June*, 1852.

I hereby certify that the foregoing is a correct copy of order sent Messrs. James Reid & Co. on account Mr. H. G. Booth, 18th July, 1850.

CHAS. S. LIVINGSTON.

GREENOCK, 1 *June*, 1852.

This is one of the exhibits produced by Mr. Charles S. Livingston, a witness in the cause of A. Dennistoun & Co. *vs.* R. Stewart.

DUN. WEIR.

2. *Livingston Letter inclosing Order to Reid & Co.*

GLASGOW, 19 *July*, 1850.

Messrs. JAMES REID & Co., Mobile:

DEAR SIRS: Inclosed you have an order for 1,500 bales of cotton, without limit, for account of Mr. H. Gore Booth; please to do your very best for him; he has been in cotton last season and done very well, so that he is *quite safe*. You may, however, for security's sake, attach B. lading. Secure those qualities which are cheapest when you receive this———

* * * * * * *

He would prefer your sending home as soon as possible, and in parcels of about 500 each: but if you are to gain any advantage by sending all in one vessel, then you may do so. For these purchases draw in the usual way on Henry Gore Booth, 4 Beauford Place, Liverpool, and the drafts will due honor.

I remain, dear sirs,

Yours truly,

(Signed) CHAS. S. LIVINGSTON.

GLASGOW, 3*d June*, 1852.

I hereby certify that the foregoing is a correct copy of the parts of my letter to James Reid & Co., of date 19 July, 1850, relative to accompanying order to purchase cotton on account of H. G. Booth.

CHAS. S. LIVINGSTON.

3. *Copy of Telegraph forwarded to J. Reid & Co. from New York.*

"Buy fifteen hundred bales cotton of qualities relatively the

cheapest when this is received. Ship on 3 ships or the whole on one, preference to three; for reimbursement *draw on Henry Gore Booth, four Beauford Place, Liverpool.* If any advantage, attach bills of lading. *Ship to Liverpool.*"

I certify this also to be a correct copy of despatch forwarded to New York, to be sent thence to Messrs. James Reid & Co., Mobile.

Glasgow, 3d June, 1852.

CHAS. S. LIVINGSTON.

Stewart's Deposition.

The said Andrew Stewart, merchant in Greenock, being solemnly sworn and examined on the part of the defendant in cause, does testify and depose as follows:—

I am partner of the firm of Andrew Stewart & Co., merchants in Greenock. Mr. Roger Stewart, the defendant, is my brother, and he is sole partner of the firm of James Reid and Company. Reid & Co. are commission agents in Mobile, and have been long established there as such. They are well known both in the States and this country as commission agents. I know Mr. Charles S. Livingston, of Glasgow; he is a cotton broker. I have had a little experience myself in the cotton trade, and I have been in business in New Orleans.

Being interrogated. Do purchasers of exchange or other parties dealing in the cotton trade know, in contracting with well known commission houses, that such houses are acting not for themselves as principals, but for others as agents?

Answers. Sometimes they do, and sometimes they do not.

Interrogated. Whether looking to the position of the two houses and the circumstance of the defendant's being well known as commission agent, would the plaintiffs know that Messrs. Reid & Co. were the drawers of bills for puchases of cotton, in making these drafts they were acting as agents for others?

Answers. I do not think that the plaintiffs would be able to say in the general case upon what footing such drafts were made; I have heard of Henry Gore Booth, although I did not know him; I know that in the year 1850 Booth was an importer of cotton, and for some time previously; Booth gave an order to my own house at New Orleans for the purchase of cotton, about the same time as I understood he had given an order for cotton to Reid & Co., and to the extent of 1500 bales; my order was executed; the bills of lading were attached to part of my drafts for this cargo: In the autumn of that year, I considered Booth's credit bad from the information I received; at that time it was considered in Liverpool that Booth was a man the less to do with whom was best; I know that Dennistoun & Co. of New York, purchased all the exchange I drew for the cargo of 1512 bales, which I purchased for Booth, with the exception of one bill for 1500 pounds.

Interrogated. Supposing Messrs. Dennistoun & Co. of New York, were the purchasers of exchange drawn by Messrs. Reid & Co. of Mobile for a cargo of cotton shipped by the latter house in the autumn of 1850, to the order of Henry Gore Booth, would the former house have reason to know from any circumstance you are acquainted with, that Reid & Co. were acting merely as agents in the transaction?

Answers. I think it likely they would.

Interrogated. Why is it likely they would?

Answers. Because it is somewhat irregular for a Mobile house to sell exchange in New York, and buyers in consequence of such irregularity are generally anxious to know all the particulars, and whether it is bought on order or shipped on consignment. It is very common in the cotton trade, in drawing for the price of cargoes, to draw a parcel of bills first, and then when the net weights and values are ascertained, to draw what is called a balance bill, or a bill for the balance. The reason for this is sometimes dependent on the state of the weather, which prevents the cotton being weighed, and the invoices made up to a point, and the necessity sometimes of giving exchange in time to catch particular steamers for Britain. This practice is well known to buyers of exchange, and the buyers of exchange are generally informed that there will be a balance bill. When bills of lading are attached to bills of exchange, it is the general understanding amongst merchants that the contents of their bills of lading are specially pledged as a security for the payment of the bills of exchange so far as the proceeds of the bills of lading will go.

Interrogated. Are the buyers of exchange or holders of the bills of lading so attached entitled to part with the bills of lading to a third party relieved of the pledge or special appropriation, without proper security for the payment of the bills of exchange?

Answers. Not unless an arrangement to that effect had been made with the sellers of exchange, and if the holder of the bills were to do otherwise, I hold it to be the understanding of merchants that the drawers of exchange would be relieved from all liability in respect of their drafts.

Interrogated. Being shown the exhibits made by Mr. Livingston, and the witness's attention being directed to the instruction contained in the following words: "You may, however, for security's sake attach B. lading;" also, "If any advantage, attach bills of lading;" and supposing that Reid & Co. did accordingly attach the whole of the bills of lading for payment of the bills of exchange drawn against the shipment, and Messrs. Dennistoun & Co. of New York became the purchasers of the exchange, were they bound and entitled to hold the bills of lading for the benefit of all prior parties upon the drafts whose name stood thereon in the line of securities?

Answers. Dennistoun & Co. were bound to hold the bills of lading until the bills of exchange were paid.

Interrogated. Suppose Messrs. Dennistoun received payment of the whole exchange excepting the balance bill drawn against the cargo, parted with the whole bills of lading attached or impledged as above mentioned, to a third party upon the agreement that he would take up such balance bill when it came to hand, but fail to exact any security for the fulfilment of that obligation, and that the third party did not implementill, but appropriated the goods to his own use, leaving the balance bill unprovided for, in such a case would the drawer be relieved of his liability for payment of the balance bill?

Answers. I should think he would. I do not know that any similar case ever existed; none ever happened in my experience. I know that a vessel named the Windsor Castle arrived from Mobile in the fall of 1850. I think Booth had stopped payment before the vessel arrived, or shortly afterwards. When the Windsor Castle arrived, Booth was in bad credit, and I ascertained this to be the case about two months before he actually stopped payment, and I had ascertained this long before the Windsor Castle arrived, say about two or three months. I know a man called Byrne. He was in use to sign bills per procuration of Booth as acceptor. Byrne was in good credit when the Windsor Castle arrived, at least I know nothing to the contrary. I would have trusted Byrne at that time, but not Booth.

Cross-Examined for the Plaintiffs.

He does further testify and depose:—

I cannot tell on what day the Windsor Castle arrived in this country, nor in what month; but I think it was November. I cannot tell on what day or in what month Booth stopped payment, but on referring to my books I find it was about 1st December, 1850. The value in money of the order which Booth gave to my own house at New Orleans, was about £20,000 in money. I am not acquainted personally with the exchange transactions in New York; but I am personally acquainted with such transactions in New Orleans, and they are the same in Mobile, and I think also in New York.

Interrogated. Has a buyer of exchange in any of these places with bills of lading attached, any means of knowing without being informed, whether or not a balance bill is subsequently to be sent forward?

Answers. No, not unless he was informed.

Interrogated. Whether a buyer or holder of exchange with bills of lading attached, is entitled according to the practice of merchants to retain the bills of lading after he has got payment of the particular bills of exchange attached to it?

Answers. This is matter of arrangement.

Interrogated. Supposing there be no arrangement as to retaining them, is he bound, according to the practice of merchants, to deliver

up the bills of lading on getting payment of the particular bills of exchange attached thereto?

Answers. He is not bound, but he may do so as he likes; it is a matter of arrangement in regard to the discount to be allowed on anticipating the maturity of the bills.

Interrogated. Does it ever happen that a balance bill is sent to this country through a different channel than that of the buyers or holders of the previous partial bills, having the bills of lading attached?

Answers. Yes.

Interrogated. Is the object of attaching bills of lading to bills of exchange to give a security to the buyers of exchange for the particular bills of exchange bought where no other object is disclosed by the sellers of exchange?

Answers. Where no balance bill is talked of by the sellers of exchange, the object is to give both buyers and sellers a security for the particular bills of exchange attached to the bills of lading.

Interrogated. Do James Reid & Co. buy and ship cotton on their own account as well as act as agents for others in the purchase and shipment of cotton?

Answers. I cannot speak positively, but I believe they do.

Interrogated. Supposing they do, have parties who buy from them exchange with bills of lading attached, any means of knowing unless expressly informed, whether the bills of lading represent shipments of their own or shipments made by them on account of other parties?

Answers. I don't know that they have.

Reinterrogated for the Defendants.

Interrogated. Supposing Messrs. Dennistoun parted with the bills of lading in question to Byrne, upon consideration that he would agree to take under discount all the drafts against the cotton which had at that time come to hand, and also that he would accept and pay at maturity any balance that might be drawn on account of the cotton where the bill came to hand, would that indicate to you as a merchant that they had been sufficiently appraised by the sellers of exchange, that the cargo was intended as a security for the balance bill as well as the previous bills, and were they bound under such circumstances to provide for the payment of that bill before making a surrender of the bills of lading?

Answers. Yes.

Re-Cross-interrogated for the Plaintiffs.

In the case supposed, do you mean that Messrs. Dennistoun would be bound from your idea of what the law should be, or from actual practice amongst merchants in the like cases?

Answers. It is from my idea of what the law should be. I do not know of another case of this kind. All which is true, as this deponent shall answer to God. ANDREW STEWART.

Commiss'ers Certificate.

I, Duncan Weir, the Commissioner named in the commission hereto attached, and acting under and by virtue of said commission which issued from the City Court of Mobile, for Mobile county, in a certain cause pending in said Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant, do hereby certify that I caused Charles S. Livingston and Andrew Stewart to come before me, at the time and place respectively hereinbefore named; that the said witnesses were and each of them was duly sworn by me; that what is written on the thirty-one preceding pages, and on a separate paper, consisting of thirteen pages (which I ordered to be separately sealed up), is what they severally testified to; that the testimony of the said witnesses was reduced to writing, and that each of the witnesses subscribed his name to his own testimony in my presence, after the same had been first read over to him by me, and that the reason why I ordered the testimony or part of the testimony of Andrew Stewart to be sealed up, was because certain objections were taken to his admissibility as hereinbefore more particularly explained, and these objections, after I had reduced them to writing, I reserved for the consideration of the Court, on this footing, that if the Court should be of opinion that the objections were ill founded, the separately sealed testimony might be opened and read as done in virtue of the said commission (in which case I have been careful to authenticate and identify such separate testimony), but if the Court should consider them well founded, the separate deposition should be rejected or otherwise dealt with, as the Court might direct.

In testimony whereof I have hereunto set my hand and seal, this first day of June, eighteen hundred and fifty-two years, Anno Domini.

DUN. WEIR.

DAVID GLASSFORD, *Clerk to the Commission.*

Commission to take Depositions of Anderson, Joynson and Witherby.

THE STATE OF ALABAMA, MOBILE COUNTY,

City Court of Mobile:

To JOHN MILLER, Esq., greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to examine Thomas D. Anderson, Moses Joynson and Percival Witherby, as witnesses in a cause pending in our said Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore we command you, that on the 12th day of April, 1852, at the office of said John Miller, in Liverpool, in the kingdom of Great Britain, you do cause the said Thomas D. Anderson, Moses Joynson and Percival Witherby to come before you, and

then and there examine them on oath as witnesses in the cause aforesaid; and that you do take such examination, and reduce the same into writing, and return the same, annexed to this writ, closed up under your seal into our said City Court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, Clerk of our said City Court of Mobile, at office, this 25th day of February, in the year of our Lord one thousand eight hundred and fifty-two.

Attest: REUBEN A. LEWIS,
Clerk.

Let the plaintiffs or their attorneys have forty days' notice of the time and place of executing this commission.

REUBEN A. LEWIS,
Clerk.

Notice.

STATE OF ALABAMA, MOBILE COUNTY,
City Court of Mobile:

To said plaintiffs, or to Phillips & Sewal, Esqrs., their attorneys.

A. DENISTOUN & Co.
vs.
ROGER STEWART.

You will please to take notice that on the twelfth day of April, A. D. 1852, before John Miller, as Commissioner, and at his office in Liverpool, in the Kingdom of Great Britain, we shall proceed to take the testimony of Thomas D. Anderson, Moses Joynson and Percival Witherby in behalf of the defendant in the above entitled cause, and to be read in evidence on the trial of the same, when and where you can be present to cross-examine the said witnesses, if you think proper so to do.

TAYLOR & HITCHCOCK,
Def'ts Att'ys.

Sheriff's Return.

Rec'd Feb'y 26th, 1852, and executed the same day at ½ past 10 o'clock, by serving a copy of the within notice on K. B. Sewall, Esq. of the firm of Phillips & Sewall.

JAS. F. HUTCHISSON,
Sh'ff M. C.

(*Execution of the Commission.*)

A. Denistoun & Co.
vs.
Roger Stewart.

By virtue of the commission hereto attached, and which issued from the City Court of Mobile for Mobile County, in the foregoing stated cause, and in which said commission I am named as Commissioner, I have caused the witnesses named in said commission to come before me at the time and place specified in said commission, and the said witnesses having been first duly sworn by me upon the Holy Evangelists of Almighty God, did testify and depose as follows, to wit: the said Thomas Darnley Anderson, one of the witnesses named in the said commission, then and there testified as follows, in behalf of the def't in the above entitled cause, to the questions following, viz:—

(*Deposition of Anderson.*)

Q. What is your name?

A. Thomas Darnley Anderson.

Q. Where do you reside, and what is your business?

A. I am a merchant in Liverpool.

Q. Do you know the parties in this cause of Dennistoun against Stewart?

A. Yes. I know Mr. W. C. Mylne, the acting partner in Liverpool of Messrs. Dennistoun & Co. the plaintiffs, and Mr. Roger Stewart, sole surviving partner of the firm of James Reed and Company, of Mobile.

Q. Is Mr. Stewart, the def't, a partner of Reed & Co. of Mobile?

A. He is.

Q. Are you Reid & Co.'s correspondents?

A. We are.

Q. Is it under the firm of Glen & Anderson that you are such correspondents?

A. It is. I am a partner of that firm, and we are James Reid & Co.'s agents.

Q. Do you know anything of a quantity of cotton shipped by the Windsor Castle, by Reid & Co. at Mobile, and consigned to order in this country?

A. Yes.

Q. Have you had any conversation with Dennistoun & Co., the plaintiffs in this cause, in regard to that cotton?

A. Yes.

Q. On what occasions was that?

A. As agent for James Reid & Co. when a bill drawn by James Reid & Co. on Henry Gore Booth was not paid. Dennistoun & Co.

A. I cannot speak as to the date of the 26th Sept., 1850, but Mr. Mylne did inform me that at the time the bill of lading was so given up they were not aware of any other bills of exchange having been drawn against the cotton, and also that the understanding was, and Mr. Byrne replied as stated in the question.

Q. Did not Mr. Mylne in reply to your offer to take up the bill on certain conditions say that if you would submit them in writing, and that the matter could be completed before the sailing of the next steamer, he would, after communicating with his legal adviser, give you an answer?

A. I do not precisely recollect the reply, but Mr. Mylne said if an agreement could be made out, or if I could bring him a letter with the conditions I promised, he would consider of it, and as the steamer was sailing next day, I went to my solicitor and had a rough letter or memorandum drawn out, which I took to Mr. Mylne, but as he was sending a clerk to London to see if anything could be got from Mr. Booth, the further consideration of the matter was postponed until the following week, when Mr. Mylne declined our proposal.

Q. Can you tell the date on which you took the rough letter or memorandum to Mr. Mylne, and did it contain the terms of your proposal?

A. I cannot tell the date at present, but I could find it out. I believe it contained the terms. I do not recollect leaving it with Mr. Mylne.

Q. At what time in the day did you see Mr. Mylne with the memorandum?

A. It was about 5 o'clock; certainly between five and six o'clock. It was a Friday afternoon; the packet was to sail the next morning.

Q. Have you had dealings in exchange as holders of drafts against bills of lading?

A. Very few.

Q. Are you not aware that it is entirely in the discretion of the holder of a bill of exchange with a bill of lading attached, to give up the bill of lading either without security or with such security as he may think proper, on the bill of exchange being acccepted, according to his view of the credit of the acceptor?

A. I believe that the buyers of exchange in America generally instruct their agents in England to hold the bill of lading against the bill of exchange, and only to deliver it up if they are perfectly satisfied that the acceptor is a party of undoubted standing, or on their getting security for the same or payment under discount, and in the absence of instructions I consider that the holder of such a bill of lading would have discretionary power to give it up if he were perfectly satisfied with the credit of the parties.

Q. Is it not a usual course of business for a bill of exchange drawn against a shipment of cotton to be taken up by the drawee under discount?

A. It is.

Q. In such a case would not the drawee be entitled to have the bill of lading delivered up to him?

A. Certainly.

Q. Was it not understood in September, 1850, that the large speculations in which Mr. Henry Gore Booth was engaged, to which you have referred in your examination in chief, had been very profitable?

A. It was generally understood that he had made a good deal of money, but not sufficient to warrant him entering into such extensive transactions.

Q. Were not Messrs. A. Dennistoun & Co., of Liverpool, acting as agents in this transaction for Messrs. Dennistoun, Wood & Co., of New York, who were the buyers of the bill for £4,417 14 11, referred to in your examination in chief?

A. I am not aware whether Messrs. A. Dennistoun & Co., of Liverpool. were the agents of Messrs. Dennistoun, Wood & Co., of New York, or *vice versa*, or whether the two houses are the same.

Q. Do you know whether *whether* Messrs. Dennistoun, Wood & Co. were buyers of the bill?

A. I understood they were.

THOMAS D. ANDERSON,

J. MILLER.

And the said Moses Joynson then and there testified as follows on behalf of the defendant to the questions following:—

Q. What is your name?

A. Moses Joynson.

Q. What is your residence and business?

A. I am a cotton broker in Liverpool.

Q. What is the custom as to delivery of a bill of lading held in security of bills of exchange drawn for the price of the goods in the bill of lading?

A. The custom is to take a broker's engagement to hold the proceeds of the goods subject to the payment of the bills drawn against such goods.

Q. Is that where there are no instructions as to the disposal of the bill of lading by the shippers abroad?

A. Yes; I should say invariably, except when the parties are in unquestionable credit.

Q. Would you part with such a bill of lading on the mere verbal statement of a third party, that he would take up the bill of exchange drawn against it?

A. No; certainly not.

Q. That is the custom in Liverpool?

A. Yes.

Q. About the end of 1850 and beginning of 1851, in what credit was Mr. Henry Gore Booth?

A. He had been engaged in large speculations, and was not in very good credit.

And the said Moses Joynson being cross-examined on the part of the plaintiffs, answered as follows:—

Q. What is you age, and how long have you been engaged in business?

A. I am thirty years of age, and have been in business nine years.

Q. Have you ever had dealings in exchange, either as a holder of bills of exchange drawn against cotton, or as a direct consignee?

A. I was never the holder of bills of exchange drawn on other parties against bills of lading attached, but my brother and myself, who are partners in business, have accepted bills drawn upon us against cotton, with bills of lading attached to the bills of exchange.

Q. Have you had many such transactions?

A. Not very many; it is not our regular business.

Q. Are you not aware that it is entirely in the discretion of the holder of a bill of exchange with a bill of lading attached to give up the bill of lading, either without security or upon such security as he may think proper, according to his view of the credit of the acceptor?

A. I think this would depend entirely upon the instructions which the party had received from the seller or drawer of the bill of exchange; there are printed instructions which buyers of exchange generally supply in blank to the sellers to fill up. In the absence of the specific instructions, I consider it is entirely in the option of the holder of the bill in this country.

MOSES JOYNSON.

J. MILLER.

And the said Percival Witherby then and there testified as follows on behalf of the defendant to the questions following:—

Q. What is your name?

A. Percival Witherby.

Q. What is your business?

A. I am a merchant in Liverpool.

Q. What is the custom as to giving up a bill of lading held as a security for bills of exchange drawn for the price of the goods mentioned in the bill of lading?

A. The generality of holders of exchange annexed to bills of lading, consider it imperative not to give up the bill of lading without good security, or payment of the bills of exchange.

Q. Is this the case where there are no instructions as to giving up the bill of lading by the shipper abroad?

A. Yes.

Q. About the end of 1850 and beginning of 1851, in what credit Mr. Henry Gore Booth?

A. I do not know.

And the said Percival Witherby being cross-examined on the part of the plaintiffs, answered as follows:—

Q. Are you not aware that it is entirely in the discretion of the holder of a bill of exchange with a bill of lading attached, to give up the bill of lading, either without security or on such security as he may think proper, according to his view of the credit of the acceptor?

A. I am not aware of it.

P. WITHERBY.

J. MILLER.

Comm'rs Certificate.

I, John Miller, the Commissioner named in the commission hereto attached, and acting under and by virtue of said commission, which issued from the City Court at Mobile for Mobile County, in a certain cause pending in said Court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant, do hereby certify that I caused the said Thomas Darnley Anderson, Moses Joynson and Percival Witherby to come before me at the time and place hereinbefore named; that the said witnesses were and each of them was duly sworn by me; that they severally testified as it is hereinbefore set down; that the testimony of said witnesses was by me reduced to writing, and that each of said witnesses subscribed his name to his own testimony in my presence after the same had been first read over to him by me.

In testimony whereof I have hereunto set my hand and seal this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-two.

[SEAL.] J. MILLER.

Deposition of William S. Moreland.

William S. Moreland being duly sworn, said: That the shipment of 1058 bales of cotton p'r ship "Windsor Castle," was made by defendant under the authority of an order from said Henry Gore Booth, enclosed in the letter of the witness Livingston, which order and letter are attached to said Livingston's deposition in this case. That the bill sued on was endorsed in blank and so sold to Dennistoun, Wood & Co. Also, that it was a custom known among merchants that in making shipments of this kind, different bills are drawn at different times as the purchase and shipment progresses, and that there happens a greater or less space between said bills, according to the facilities in selling the same. But that the merchants on whom the bills for a shipment is drawn, or who agreed to take the bills on a